

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 300 Quarropas Street, Room 248

13 White Plains, NY 10601

14

15 March 30, 2023

16 11:04 AM

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21 B E F O R E :

22 HON SEAN LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Omnibus Hearing

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3 HEARING re Doc. #124 Notice Of Agenda

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5 HEARING re Doc. #135 Motion To Set Last Day To File Proofs

6 Of Claim / Debtors' Application For An Order (I)

7 Establishing Bar Dates For Filing Proofs Of Claim; (II)

8 Approving Proof Of Claim Forms, Bar Date Notices, And

9 Mailing And Publication Procedures; (III) Implementing

10 Uniform Procedures Regarding 503(b)(9) Claims; And (IV)

11 Providing Certain Supplemental Relief

12

13 HEARING re Doc. #130 Application To Employ Houlihan Lokey

14 Capital, Inc. As Investment Banker To The Official Committee

15 Of Unsecured Creditors Nunc Pro Tunc To February 3, 2023

16

17 HEARING re Doc. #131 Application To Employ Berkeley Research

18 Group, LLC As Financial Advisor To The Official Committee Of

19 Unsecured Creditors Effective As Of February 14, 2023

20

21 HEARING re Doc. #132 Application To Employ Kroll

22 restructuring Administration LLC As Noticing And Information

23 Agent Effective As Of February 22, 2023

24

25

1 HEARING re Doc. #136 Application For Entry Of An Order  
2 Authorizing The Employment And Retention Of White & Case LLP  
3 As Counsel Effective As Of February 10, 2023  
4

5 HEARING re Doc. #158 (Cash Management: 345 Compliance)  
6 Statement Of The United States Trustee To The Cash  
7 Management Motion  
8

9 HEARING re Doc. #133 (Bidding Procedures) Motion To Approve  
10 / Debtors' Motion Seeking Entry Of An Order (I) Approving  
11 The Bidding Procedures And Related Deadlines, (II)  
12 Scheduling Eiearings And Objection Deadlines With Respect To  
13 The Debtors' Sale, And (III) Granting Related Relief  
14

15 HEARING re Doc. #14 Motion to Authorize /Debtors' Motion for  
16 Entry of Interim and Final Orders Waiving the Requirement  
17 that Each Debtor File a List of Creditors and Authorizing  
18 Preparation of a Consolidated List of Creditors, in Lieu of  
19 Submitting a Formatted Mailing Matrix, (II) Authorizing the  
20 Debtors to File a Consolidated List of the Debtors' Fifty  
21 (50) Largest Unsecured Creditors, (III) Authorizing the  
22 Debtors to Redact Certain Personally Identifiable  
23 Information, and (IV) Granting Related Relief  
24  
25

1 HEARING re Doc. #137 The Official Committee Of Unsecured  
2 Creditors Motion For Entry Of Order Requiring The Redaction  
3 Of Certain Personally Identifiable Information

4  
5 HEARING re Doc. #67 Motion To File Under Seal / Debtors  
6 Motion Pursuant to 11 U.S.C. 107(b), 107(c) And 105(a) For  
7 Entry Of An Order Authorizing The Debtors To Redact And File  
8 Under Seal Certain Information About The Confidential  
9 Parties Listed In The Debtors Professional Retention  
10 Applications And Schedules

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25 Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Sean Lane in the United States Bankruptcy Court for the Southern District of New York and we're here for an 11:00 o'clock hearing in the Chapter 11 case of Genesis Global Holdco LLC. So, we'll start, as we always do, by getting appearances, so let me find out who's here on behalf of the debtor.

MS. VANLARE: Good morning, Your Honor. Jane VanLare, Cleary, Gotlebb, Steen and Hamilton, on behalf of the debtors, and I see my partner Sean O'Neal is on as well.

THE COURT: All right, good morning. And on behalf of the Official Committee of Unsecured Creditors?

MR. PESCE: Good morning, Your Honor. It's Gregory Pesce, White Case, proposed counsel to the Committee. In addition to myself, speaking at the hearing today will be Amanda Parra Criste and Michelle Meises. My partners Christopher Shore and Phil Abelson are also on the line today. Thank you.

THE COURT: All right.

MR. WESTON: And I'm Richard Weston, co-Chair of the UCC.

THE COURT: All right. Good morning to you all. And on behalf of the ad hoc group of Genesis customers?

MR. SAZANT: Good morning, Judge Lane. Jordan Sazant on behalf of the ad hoc group of Genesis lenders,

1 Proskauer Rose.

2 THE COURT: All right, and on behalf of the United  
3 States Trustee's Office?

4 MR. ZIPES: Good morning, Your Honor. Greg Zipes  
5 with the U.S. Trustee's Office.

6 THE COURT: All right, good morning. And so,  
7 there are obviously quite a few appearances listed on my  
8 sheet here and I realize that many of these folks are on for  
9 listen-only, so rather than potentially call a long roll  
10 call of names for which a lot of folks don't respond, I will  
11 simply ask at this point who else needs to make an  
12 appearance; that is, folks who expect to be -- to  
13 participate actively in the hearing this morning.

14 MR. SAFERSTEIN: Good morning, Your Honor.  
15 Jeffrey Saferstein from Weil, and Gotshal Manges on behalf  
16 of Digital Currency Group.

17 THE COURT: All right, good morning. Anyone else?

18 MR. MARGOLIN: Good morning, Your Honor. Jeffrey  
19 Margolin, Hughes, Hubbard and Reed, on behalf -- with my  
20 colleague, Anson Frelinghuysen, on behalf of Gemini Trust  
21 Company as agents.

22 THE COURT: All right, good morning. Anyone else?

23 MS. ASSI: Good morning, Your Honor. Stephanie  
24 Assi on behalf of Ross D. Blankenship and Dr. Williams (sic)  
25 Blankenship.



1 THE COURT: All right, good morning. Anyone else?  
2 all right. So, with that, I will turn it over to the  
3 debtors to walk us through the agenda that was filed with  
4 the docket, Docket Number 168, and I'm open to suggestions  
5 as to what order and which way you want to proceed.  
6 Counsel?

7 MS. VANLARE: Yes. Thank you, Your Honor. We  
8 have a full agenda for this morning's hearing, so I'll just  
9 kind of give you an overview of where I think we are and  
10 suggest an order.

11 We have a number of retention applications, which  
12 I believe are uncontested. I would suggest we start with  
13 those, and then we'll proceed to the substantive motions.  
14 We have the Section 345 issue. I'd like to start with that,  
15 following the retention applications. The U.S. Trustee  
16 filed a statement; we filed a reply and we have some  
17 additional remarks on that. I'm hopeful we can resolve that  
18 issue. We also have the bar date motion. On that, Your  
19 Honor, we'll get into the substance. I believe we're  
20 resolved on all issues in principle. We are working on some  
21 language for the orders, so -- and I'll speak more to this  
22 when we get there, but I can sort of lay out what I think is  
23 an agreement in principle as to the limited objection that  
24 had been filed yesterday, and understand that the parties  
25 may need a little extra time after the hearing to review the

1 order and make sure everybody signs off on the language.

2 Then we have the bidding procedures, and that one,  
3 too, Your Honor -- as of right now, we were down to two  
4 issues and I think we're very, very close and I in fact am  
5 hopeful that perhaps in the next twenty minutes we will get  
6 to a fully consensual order, and we're also filing  
7 momentarily a blackline of that order, so I can walk Your  
8 Honor through the changes we've made. Again, we're very  
9 close. I'm cautiously optimistic on that one.

10 And then, I thought we would leave for last but  
11 not least the issues related to the redactions and the  
12 sealing motions, since that includes a number of motions and  
13 I believe that may be the lengthiest part of the hearing, so  
14 I would propose we leave that for last.

15 THE COURT: All right. That all sounds fine.  
16 Obviously, when folks are here in the courtroom, we have a  
17 little more flexibility in terms of -- or it's easier to  
18 sort of say, "Judge, we'd like a moment. Can we take  
19 fifteen minutes? Can we talk in the hallway?" and I  
20 certainly am amenable to taking a break at an appropriate  
21 spot to allow you to do virtually what you would otherwise  
22 do in person. And so, I also will say to the extent that we  
23 have future hearings where you say, "Gee, Judge. It would  
24 actually be helpful to come in, because we think we're going  
25 to have one of those kinds of hearings where it would be

1 helpful to have folks together to have those conversations,"  
2 please let me know, because we can always have a hybrid  
3 hearing that allows the folks who think it would be  
4 beneficial to be in person in person, other folks to  
5 participate remotely. But I'll be guided by the parties in  
6 terms of letting me know if you think there's a point in  
7 time when it would make sense to take a break.

8 Obviously, it's ten after 11:00. We may be here  
9 for a little while, so that maybe we can take advantage of a  
10 lunch break, but again, you all know where you are much more  
11 than I do and what would be beneficial. So, you'll give me  
12 your thoughts as we go forward. So, with that, Ms. VanLare,  
13 take it away in terms of teeing up the matters.

14 MS. VANLARE: Appreciate that, Your Honor. I'm  
15 actually going to pass the virtual podium to the Committee.  
16 They have a number of retention applications I believe  
17 they'd like to present.

18 THE COURT: All right, please. Let me hear from  
19 the Committee.

20 MS. CRISTE: Good morning, Your Honor. Can you  
21 hear me okay?

22 THE COURT: I can hear you just fine. Thank you.

23 MS. CRISTE: Great, Your Honor. For the record,  
24 Amanda Parra Criste of White and Case, proposed counsel to  
25 the Committee. I'll be presenting a number of the

1 Committee's retention applications. I'm going to start with  
2 Houlihan Lokey. The application for Houlihan Lokey to be  
3 retained as investment banker can be found at Docket Number  
4 130. By the application, the Committee requests approval to  
5 retain Houlihan Lokey as the Committee's investment banker  
6 in order to enable the Committee to fulfill its statutory  
7 duties.

8 The general deadline, Your Honor, to object to all  
9 of the Committee's retention applications was March 23rd.  
10 we extended that deadline for the U.S. Trustee only. We had  
11 some great informal discussions with the U.S. Trustee and  
12 there were no objections or comments to the form of order.  
13 We actually filed a CNO yesterday at Docket Number 175 that  
14 attaches the same form of order that was attached to the  
15 retention application. So, unless Your Honor has any  
16 questions, we respectfully request that Your Honor approve  
17 Houlihan Lokey's retention as investment banker to the  
18 Committee and enter the form of order that's attached to the  
19 CNO.

20 THE COURT: All right, thank you very much.

21 MS. CRISTE: For Number 175, yeah.

22 THE COURT: All right. Let me ask if there's  
23 anything from the United States Trustee's Office in  
24 connection with this application.

25 MR. ZIPES: Your Honor, Greg Zipes with the U.S.

1 Trustee's Office and we have no objection to that retention  
2 or any of the other retention applications to short circuit  
3 that, Your Honor. But as with the debtor's counsel, there  
4 are certain confidential clients, clients that are involved  
5 with litigation that is maybe responding to government  
6 investigations or that were maybe on a list of companies in  
7 trouble that may be a debtor in the future and other types  
8 of clients of those types that are being redacted from the  
9 public record and that are being shared with U.S. Trustee's  
10 Office and others involved, and I just wanted to make clear  
11 that there are -- we're consenting to some redactions in  
12 that context, and that applies for all the professionals.

13 THE COURT: All right, thank you very much. That  
14 sounds eminently sensible and fair under the circumstances.  
15 Any other party that wishes to be heard in connection with  
16 this application?

17 All right, hearing no responses and in light of  
18 the CNO and the record, I'm happy to grant this application  
19 on the terms set forth in the motion and consistent with the  
20 professional compensation outlined fee and expense structure  
21 that's explained in the motion as appropriate under the  
22 facts and circumstances of the case and applicable law.  
23 Next up.

24 MS. CRISTE: Thank you, Your Honor. Next up is  
25 the Committee's application to retain Berkeley Research

1 Group as financial advisor to the Committee. The  
2 application can be found at Docket Number 131. By the  
3 application, the Committee requests approval pursuant to  
4 Section 328 and 1103 of the Bankruptcy Code to retain BRG as  
5 financial advisor effective February 14, 2023.

6 Like the other retention applications, the  
7 objection deadline was March 23rd. We extended it for the  
8 U.S. Trustee, but we didn't receive any comments or  
9 objections, so we also filed a certificate of no objection  
10 yesterday at Docket Number 176. And unless Your Honor has  
11 any questions, we would respectfully request that Your Honor  
12 approve the retention of Berkeley Research Group as  
13 financial advisor to the Committee.

14 THE COURT: All right, thank you very much. Let  
15 me ask if there's any party that wishes to be heard in  
16 connection with this application.

17 All right. Hearing no responses other than the  
18 one that Mr. Zipes has already put on the record -- the only  
19 thing I would ask, counsel, is if you would explain for  
20 folks who may be less familiar with how large bankruptcy  
21 cases work the difference between having Houlihan Lokey as  
22 an investment banker and Berkeley Research Group as a  
23 financial advisor, just because I think for folks who may be  
24 -- customers who may be listening in, that may not be quite  
25 as obvious a point as it is for professionals who

1 participate in these cases on a regular basis.

2 MS. CRISTE: Sure, Your Honor. So, BRG as  
3 financial advisor to the Committee is really going to help  
4 assist with developing periodic reports, monitoring the  
5 debtor's financial performance, reviewing the schedules and  
6 statements that the debtor has recently filed, monitoring  
7 things like liquidity, cash flow, scrutinizing cash  
8 disbursements that the debtors might be making, reviewing  
9 monthly operating reports, working with White and Case to  
10 analyze the relief (indiscernible) that the debtors might be  
11 seeking, monitoring and reviewing intercompany transactions.  
12 So, those are things that are BRG's goal as financial  
13 advisors.

14 Houlihan Lokey as investment banker is going to be  
15 helping the Committee analyze potential restructuring  
16 transactions, whether through a Chapter 11 plan or  
17 otherwise. They're going to also be helping us monitor the  
18 sale process that the debtor is actually seeking approval to  
19 launch today, including, you know, working with the debtor's  
20 advisors to analyze potential bids and consult with the  
21 debtors on that process. So, those are kind of the  
22 differences between the two. They are pretty significant.

23 THE COURT: All right. Thank you very much for  
24 that explanation. I'm happy to grant the motion and  
25 application for the employment retention of Berkeley

1 Research Group as financial advisor to the Official  
2 Committee. I find it to be appropriate under the facts and  
3 circumstances of the case and consistent with applicable  
4 law. So, next up?

5 MS. CRISTE: Next up is the Committee's  
6 application to retain Kroll Restructuring Administration as  
7 noticing and information agent. As we reported at the last  
8 hearing, Your Honor, the Committee is very active in its  
9 communication and outreach. We launched a website with  
10 Kroll, and so this application is just an extension of the  
11 relief that we received under our information protocol  
12 motion to retain Kroll as the Committee's noticing and  
13 information agency in these cases.

14 Like the other retention applications, the  
15 deadline was March 23rd. We didn't receive any comments or  
16 objections. We also filed a certificate of notice for  
17 Kroll's application, and that's at Docket Number 177. The  
18 proposed order is attached to that certificate. So, unless  
19 Your Honor has any questions, we would respectfully request  
20 that the Court entered the order approving Kroll's retention  
21 as information agent to the Committee.

22 THE COURT: All right, thank you very much.  
23 Anyone who wishes to be heard on this application?

24 All right, hearing no responses other than Mr.  
25 Zipes's earlier, more global comment, I'm happy to approve



1 this application as well as appropriate under the facts and  
2 circumstances of the case and consistent with applicable  
3 law, and I think next up, then, is the application dealing  
4 with the Committee's counsel.

5 MS. CRISTE: Yes, Your Honor. That's the last  
6 one. The application to retain White and Case as legal  
7 counsel to the Committee is that Docket Number 136. By the  
8 application, the Committee is requesting approval to retain  
9 White and Case as counsel effective February 10th pursuant  
10 to Section 382 and 1103 of the Bankruptcy Code.

11 Like the others, the objection deadline was March  
12 23rd. We didn't receive any comments, Your Honor, or  
13 objections. The same comment that Mr. Zipes made applies to  
14 White and Case as well, but we went ahead and filed a  
15 certificate of no objection yesterday as well for the White  
16 and Case application and that's at Docket Number 178. So,  
17 Your Honor, unless you have any further questions, we would  
18 respectfully request that the Court approve the retention of  
19 White and Case as counsel to the Committee.

20 THE COURT: Thank you very much. Any party wish  
21 to be heard in connection with this application?

22 All right, hearing no response other than Mr.  
23 Zipes's earlier global comment about all these retentions,  
24 I'm happy to grant this retention application as well as  
25 appropriate under the facts and circumstances of the case

1 and applicable law. And we will await electronic versions  
2 of the proposed order from counsel and get those entered.  
3 Thank you.

4 MS. CRISTE: Thank you very much, Your Honor.

5 THE COURT: All right. So, next up, I imagine  
6 that debtor's counsel will be taking the laboring oar in  
7 terms of the next matter.

8 MS. VANLARE: Yes, Your Honor. Thank you very  
9 much. So, would like to proceed to the Section 345 issue.  
10 As you may recall, Your Honor, this was expressly carved out  
11 of the final cash management order, so we are here before  
12 you to resolve that on a final basis.

13 As I mentioned, U.S. Trustee had filed a statement  
14 on this issue -- and I should note, we have been in  
15 discussion with the U.S. Trustee's Office on Section 345  
16 issues really since we filed, and probably before we filed,  
17 so this is really the culmination of a lot of discussions  
18 and we have made a lot of efforts over the past couple  
19 months to make -- to be in compliance with Section 345 to  
20 the extent possible. So, Your Honor, we did file a  
21 statement in reply to some of the issues raised by the  
22 United States Trustee. I'll just briefly summarize I think  
23 the -- our response on the various points.

24 So, first, with respect to the cash assets, as we  
25 noted, we have moved all of the debtor's cash assets out of

1 noncompliant accounts. I know we've spoken in previous  
2 hearings about all of our efforts, which have been very  
3 successful given the recent turmoil in the banking industry,  
4 to safeguard the debtor's assets. So, we have moved  
5 everything out of noncompliant accounts. There is one  
6 account maintained by Merricks Capital Markets that we are  
7 in the process of closing. It has just over \$3 million in  
8 it. We expect that to be closed in the next few weeks and  
9 we've discussed this with the Office of the U.S. Trustee,  
10 and we ask for an extension of our time to complete that  
11 closure until April 14th, and I believe that Mr. Zipes has  
12 no issues with that.

13 Next, the U.S. Trustee raised issues with respect  
14 to our digital assets. I will note that this has been a  
15 topic of significant discussions with the Committee. It's  
16 also outlined in Paragraph 6 of the final cash management  
17 order; namely, that the debtors are authorized to maintain  
18 and manage their digital assets subject to a set of  
19 limitations and significant disclosure obligations which we  
20 have undertaken, again, to share information both with the  
21 Committee on a regular basis as well as to file reports on a  
22 regular basis on the public docket so that everyone can see  
23 them. So, I believe we've more than satisfied our  
24 obligations in terms of ensuring that our assets are  
25 safeguarded and that parties in interest have visibility

1 into the processes of safeguarding them.

2 In addition, based on the request of the United  
3 States Trustee, I also wanted to share some of the security  
4 measures that the debtors have undertaken to ensure the  
5 safety of the digital assets, and so I'd just like to  
6 describe some of those to Your Honor on the record.

7 THE COURT: Please.

8 MS. VANLARE: Most of the digital assets of the  
9 debtors are stored within Fireblocks, which is a trusted and  
10 leading custody software provider with numerous industry-  
11 leading security certifications. All transactions within  
12 Fireblocks require multi factor authentication and a forum  
13 to execute. Since January 20th, 2023, the Fireblocks  
14 workspaces containing the debtor's assets other than those  
15 used in spot trading by Gap were frozen such that  
16 transactions are not currently possible unless following a  
17 very specific security protocol, including a video  
18 verification process and a forum to execute.

19 With respect to the spot training at Gap, which is  
20 the Singapore entity, the pre-petition Fireblocks policies  
21 all remain in effect. Among other things, these policies  
22 limit who is authorized to initiate or approve transactions  
23 and require the approval of multiple parties for any  
24 significant transactions to an external address. On a daily  
25 basis, the company sends out reporting to identify any

1 changes across all companies, including GGC and Gap, to  
2 management of the debtors and the debtor's financial  
3 advisors. Finally, the company has provided the Fireblock  
4 and Ledger wallets to the UCC advisors and provides weekly  
5 detailed reporting to the UCC advisors on both the quantity  
6 and the market changes on a digital asset basis.

7 So, with that, Your Honor, I will turn to the  
8 third sort of category of issues raised by the U.S. Trustee,  
9 and that has to do with the so-called trust assets. These  
10 are shares of certain trusts sponsored by Grayscale  
11 Investments. We -- the debtors have held these shares since  
12 the petition date. We have not changed our holdings of  
13 those shares. We've not acquired new shares; we've not  
14 liquidated shares. We don't think that they are subject to  
15 Section 345. To the extent they are, we would request a  
16 waiver with respect to these assets. Your Honor, we've had  
17 a number of discussions with the U.S. Trustee on this issue.  
18 The U.S. Trustee hasn't articulated any alternative to what  
19 we are doing with those assets; namely, holding them for the  
20 time being. We've also discussed this with the Committee  
21 and the Committee agrees that no action with respect to the  
22 trust shares should be taken at this time.

23 So, given all that, Your Honor, we would ask that  
24 you approve the relief we've requested with respect to the  
25 issues. That includes, again, a limited waiver of Section

1 345 that to the extent needed, an extension of really just a  
2 few weeks to close that final account, and I believe we've  
3 resolved or addressed, at least addressed, all of the issues  
4 raised by the U.S. Trustee. But I'll stop there and let Mr.  
5 Zipes chime in.

6 THE COURT: All right. Mr. Zipes?

7 MR. ZIPES: Your Honor, thank you, and thank you  
8 to Ms. VanLare as well for that detailed explanation, which  
9 I think is -- accurately reflects our discussions.

10 Your Honor, the easiest one just to take first is  
11 the cash assets, and as stated, my office has no objection  
12 to an extension of time to close out that last account and  
13 move it into an authorized depository. And Your Honor, you  
14 may have noted our statement that we filed. It wasn't an  
15 objection; it was more of a request for further explanation  
16 in connection with the digital assets and the trust assets.  
17 These crypto cases are somewhat unique and my office is used  
18 to dealing with 345 issues in the more traditional sense,  
19 making sure there's collateral associated with that so the  
20 debtors don't suffer the insult to injury that they are  
21 already in bankruptcy and they lose major assets.

22 We look for insurance to be in place as well, to  
23 the extent 345 doesn't apply, and here we have significant  
24 assets that are in crypto or other types of investments that  
25 can't be insured in traditional ways. In the Celsius case

1 and other cases, this came up, and there was in Celsius, for  
2 example, further representations on the record on what  
3 protections and safeguards are in place. And Your Honor, my  
4 office is again not objecting to this, but we thought it was  
5 appropriate to make a more fulsome record. There's  
6 literally hundreds of millions of dollars in these assets,  
7 tied up to these assets, and we think it's important that a  
8 fulsome record be made and the Court specifically find that  
9 these are actually being protected in the bankruptcy case,  
10 because we don't want a scenario where large dollar amounts  
11 disappear in a bankruptcy case. That wouldn't happen  
12 possibly in more traditional cases where everything is  
13 sitting in an authorized depository and protected. So --

14 THE COURT: All right. Thank you very much. And  
15 let me hear from the Committee, who obviously has been  
16 involved in these discussions as well.

17 MR. PESCE: Thank you, Your Honor. It's Gregory  
18 Pesce, White and Case, again, on behalf of the Committee.  
19 We've had a lot of discussions with the debtor and the U.S.  
20 Trustee on this, and Mr. Zipes mentioned the Celsius  
21 bankruptcy, which I'm very familiar with, because I  
22 represent the Committee in that case as well. In looking at  
23 what was done in that situation and what has been done here,  
24 the Committee standing here today is comfortable with the  
25 protocol that exists. In the Celsius case, which Mr. Zipes

1 mentioned, at the time cash management was being dealt with  
2 there was a little bit more unsettled question about the  
3 treatment of the crypto assets as cash management assets.  
4 There was also significant allegations of fraud against the  
5 founders and the management team at the time, and all of  
6 them held foreign passports and many of them were residents  
7 outside of the United States in non-extradition countries.

8 As a result of that unique mix, in that case  
9 unique circumstances -- unique protocols were imposed to  
10 require people be in the United States and hold back foreign  
11 passports to make sure that the keys wouldn't be distributed  
12 and people could flee the country. Suffice it to say, those  
13 circumstances and other kinds of concerns don't exist here  
14 today. The Committee, though, is mindful that the \$1.1  
15 billion in liquid crypto is a very significant form of  
16 consideration that the creditors are going to get at the end  
17 of the bankruptcy. We are very closely monitoring. We  
18 appreciate the debtor's professionals working with our  
19 professionals at BRG on this in particular.

20 We're going to monitor the situation, and if it is  
21 necessary or prudent in the future, the Committee won't shy  
22 away from seeking additional relief or speaking with Mr.  
23 Zipes or Ms. VanLare and their respective clients to ensure  
24 that crypto is protected. But on the record today, we have  
25 no issue with cash management continuing on the terms that



1 we've negotiated and agreed to with the debtor.

2 THE COURT: All right. Thank you very much. And  
3 so, let me open it up to any other party who might briefly  
4 wish to be heard. I'm not sure there is a party who's been  
5 involved in these kinds of discussions with the estate other  
6 than the folks that we've already heard from, but in the  
7 interest of the record, anyone else?

8 All right. Hearing no other response -- so, I  
9 think it's important for purposes of this to understand what  
10 we are looking at and what bucket it goes in. So, 345 deals  
11 with money of the estate. It's actually in the title of the  
12 section, and of course, this is one of these cases where the  
13 reality of the modern day has sort of left the categories of  
14 the code perhaps in the dust. And so, I think as to the  
15 first category, which is US dollar-denominated assets as  
16 described in I guess the debtor's statement in reply, we  
17 have an agreement that the Merricks Capital Markets account,  
18 which is \$3 million, is going to be closed in the next few  
19 weeks. There is an extension of time to mid April to do  
20 that. I think we're all in good shape, and that really is  
21 the true 345 issue.

22 As to the other accounts, the digital assets and  
23 the trust shares, I haven't received any argument and no  
24 one's made the argument that these are money in the  
25 traditional sense of 345. Of course, that's a very

1 complicated question to wade into and I don't know as a  
2 matter of sort of existential certainty that we need to  
3 solve that problem here today, because really, what 345 is  
4 addressing is security of assets, and so that's what cash  
5 management motion is designed to address, and so we can  
6 address it in that context and I think that's what the  
7 parties have done and I find that to be entirely  
8 appropriate.

9 And so, I am very happy to have gotten the  
10 additional explanation by Ms. VanLare talking about  
11 Fireblocks and the other -- in the way that promotes  
12 security for the digital assets. That's very helpful. I  
13 was going to ask for some additional information on that  
14 score, knowing full well that the debtors and the Committee  
15 and the U.S. Trustee had had those conversations, but I  
16 thought it would be useful to have it on the record here and  
17 in fact now it is on the record. So, one of -- I appreciate  
18 everybody having these conversations and the level of  
19 communication that's involved. I appreciate essentially the  
20 additional proffer provided by the debtors about the  
21 security measures; that is, what is referred to as the  
22 safeguard and protocols in Paragraph 6 of the final  
23 statement and reply in Docket 180 and the additional  
24 explanation.

25 So, I am -- I also appreciate the fact that the

1 Committee of the creditors, the Official Committee here, is  
2 uniquely close to the business of the debtors here and is --  
3 one of the values that the Committee serves is for things  
4 exactly like this, and so I appreciate their involvement,  
5 and given all of the facts and circumstances here, I am  
6 satisfied with the security safeguards and protocols that  
7 have been discussed for the digital assets. And similarly,  
8 I reached the same conclusion for the trust shares. It  
9 sounds like you folks have decided that the best way to go  
10 here is the status quo, and to leave them exactly where they  
11 are to not increase the debtor's holdings of these trust  
12 shares but do not diminish them either.

13 In reaching that conclusion about the  
14 appropriateness of the handling of the trust shares as well  
15 as the digital assets, I recognize that we are always  
16 walking a fine line between allowing the debtor to run its  
17 business and also protecting the assets, so the debtor is in  
18 the business that it's in and therefore it has digital  
19 assets, so the notion that the debtor would divulge itself  
20 in digital assets or other assets that are not held in a  
21 more traditional ways that would be subject to 345 might  
22 require the debtor to essentially shutter its doors, thus  
23 destroying value and wreaking havoc that no one thinks is  
24 appropriate here.

25 So, I think for the purposes of today I'm not

1 concluding that the two categories of digital assets or  
2 trust shares fall under 345, but I do think they are  
3 entitled to appropriate security. I think I'm satisfied  
4 that appropriate steps have been taken as a result of  
5 substantial discussions with the Committee and the U.S.  
6 Trustee's Office, and I also note that no one has  
7 articulated any preferred alternative to what's been  
8 proffered by the debtors and what's been reached as a result  
9 of those conversations.

10 So, in light of all that, I'm satisfied at the  
11 moment, and in light of the record that I have in front of  
12 me, that we are in a good place and that the requirements of  
13 345 have been satisfied and that the cash management is  
14 appropriate. And obviously, folks will continue to keep a  
15 close eye on things. That's made very clear, the need to do  
16 that in light of the banking situation where certainly  
17 that's an industry that folks think of as a more traditional  
18 industry and has lately had quite a bit of economic  
19 upheaval. So, I will trust all parties to keep their eyes  
20 open and continue to monitor as is consistent with their  
21 fiduciary obligations under the Bankruptcy Code, and again,  
22 I've been provided with no reason to doubt the exercise of  
23 their fiduciary duties on anything that happened in this  
24 case.

25 So, I think for purposes of today, I'm happy to

1 grant the limited waiver of Section 345 for that one  
2 account, and I'm satisfied with the other assets of the  
3 debtors that have been under discussion in the context of  
4 this particular issue. So, with that, I think we can move  
5 on to the next matter.

6 MS. VANLARE: Excellent. Thank you very much,  
7 Your Honor. Next we'd like to address the bar date motion.  
8 Your Honor, apologies for filing it this late, but we've  
9 been working very hard to iron out the remaining issues. We  
10 did file a revised bar date order and forms at Docket Number  
11 190 just -- I think just before this hearing started.

12 So, we -- what I'd like to propose is -- I'm happy  
13 to walk through the blackline and address some of the  
14 changes that we've made in consultation with various parties  
15 in interest, and then I'd like to address the limited  
16 objection that was filed. As I mentioned at the beginning  
17 of the hearing, I believe we've reached an agreement in  
18 principle that resolves the objection, but I understand that  
19 people want to have a chance to have a final look at the  
20 order, which we're fine with doing. So, what I'd propose to  
21 do there is just again describe to Your Honor what the  
22 arrangement is in principle, and people can reserve rights  
23 to review the order.

24 THE COURT: All right. I think that sounds  
25 eminently sensible, so please proceed.

1 MS. VANLARE: Thank you, Your Honor. And just so  
2 I know, are you able to pull up the blackline that we just  
3 filed? Again, I realize --

4 THE COURT: I think I had the state of the art  
5 orders up through Docket 186, which was the orders on the  
6 sealing motions, and then 185, which was the revised order  
7 on the creditor list, but I don't believe I have 190.

8 MS. VANLARE: Okay.

9 THE COURT: I think probably -- am I right in  
10 saying I think you could probably make yourself understood  
11 just by walking through it here today from the podium?

12 MS. VANLARE: Absolutely, Your Honor. Absolutely,  
13 and --

14 THE COURT: We'll do that rather than wait for me  
15 to kill some trees and follow along, so I trust your  
16 advocacy skills are more than up to the task, so take it  
17 away.

18 MS. VANLARE: I appreciate that, Your Honor.  
19 Okay. And if anybody else is following along, I am going to  
20 start going through -- the blackline starts at about PDF  
21 Page 64. So, first we have the proof of claim. We made  
22 certain clarifying changes to the proof of claim form.  
23 Because we are dealing with crypto currency, we just made  
24 clear that if the claim is based on a crypto currency  
25 holding, that a creditor should list those crypto currency

1 holdings and they should only provide a value in US dollars  
2 if their claim is actually denominated in US dollars, and  
3 that'll just make the process of reconciliation and claim  
4 resolution run a lot more smoothly. So, these are -- this  
5 is all in the nature of cleanup and just ensuring that the  
6 claim form is as clear as possible for our creditors.

7 THE COURT: All right, and I assume with that  
8 allows you to do is match sort of like with like. You're  
9 tracking the value as it is in essentially the debtor's  
10 books and records, which is not in US dollars but in a  
11 different denomination.

12 MS. VANLARE: That's exactly right, Your Honor.

13 THE COURT: All right.

14 MS. VANLARE: Next is the bar date notice.  
15 Really, these are largely cleanup changes. I did want to  
16 highlight some changes that we've made with respect to the  
17 Gemini lender master proof of claim. The bar date order  
18 provides that Gemini as agent under the Gemini Earn program  
19 is authorized to file a master proof of claim on behalf of  
20 the Gemini lenders for the repayment of any amounts pursuant  
21 to the relevant master loan agreements. The term we use in  
22 the bar date motion is "Gemini MLAs" between GGC, which is  
23 debtor entity Genesis Global Capital, Gemini, and each  
24 Gemini lender. The changes make clear that any Gemini  
25 lender wanting to assert a pre-petition claim for an amount

1 greater than the Gemini lenders' Gemini borrowings in the  
2 Gemini Earn program or any pre-petition claims other than  
3 that for the repayment of the Gemini borrowings shall be  
4 required to submit a proof of claim; that is, a separate  
5 individual proof of claim, with respect to such pre-petition  
6 claims on or before the bar date unless there is another  
7 exception. We also based on the request of --

8 THE COURT: Can I back up for a second? I guess  
9 I'm just wondering -- it's a little unusual, so I'm  
10 wondering what the motivation is behind sort of making that  
11 explicit. I'm all for explicit, but just curious what the  
12 window is into the thinking there.

13 MS. VANLARE: Absolutely, Your Honor. So, as  
14 we've I think described in our papers and perhaps at earlier  
15 hearings, Genesis Global Capital, Gemini, and the Gemini  
16 lenders entered into a series of master loan agreements.  
17 This was done under the auspices of the Gemini Earn program  
18 that's administered by Gemini as agent under those master  
19 loan agreements. The debtors do not know the identity or  
20 the holdings of the Gemini lenders, and so the idea is to  
21 facilitate and make it easier for folks to submit their  
22 proof of claim by enabling Gemini as agent to submit a  
23 master proof of claim based on the amounts that the Gemini  
24 lenders see as part of the Gemini Earn program portal.  
25 However, we want to make clear that the master proof of



1 claim will include claims for the repayment of borrowings,  
2 but if an individual Gemini lender -- they believe that the  
3 debtors owe -- Genesis Global Capital owes more than what is  
4 stated by Gemini in their portal or if they have -- if they  
5 wish to assert a claim other than that for repayment of the  
6 borrowings, they should file -- have the right to and should  
7 file an individual proof of claim before the bar date.

8 THE COURT: All right. Thank you for that.

9 MS. VANLARE: Your Honor, as I was saying, the ad  
10 hoc group has requested really for administrative ease for  
11 both their client as well as the debtors to file a master  
12 proof of claim, listing each of their holders -- they have a  
13 large group of holders, and rather than basically putting  
14 together what I presume would be very similar, if not  
15 identical, proofs of claim, they are going to list the  
16 claims of their clients and provide that to the debtors.  
17 And so, the bar date order outlines that procedure again as  
18 a way to make the process more efficient for both the ad hoc  
19 group as well as the debtors.

20 THE COURT: All right.

21 MS. VANLARE: We have -- in the list of the  
22 categories of claimants that do not need to file a proof of  
23 claim, we've deleted intercompany claims by a Holdco  
24 subsidiary or Genesis Global Trading. The idea is that  
25 intercompany claims of course are disclosed in the

1 schedules, and so if the debtors don't have an issue with  
2 the claims disclosed in the schedules, intercompany claims  
3 do not need to be filed. Based on comments from the  
4 Committee, they wanted to be clear that if we disagreed with  
5 the schedules, that intercompany claimants should have to  
6 file a proof of claim.

7 THE COURT: All right.

8 MS. VANLARE: We've also deleted former officers  
9 and directors and employees of the debtors from the list.  
10 In other words, former -- so, current officers, directors,  
11 and employees of the debtors do not need to file a proof of  
12 claim based on indemnification, contribution, or  
13 reimbursement, but former officers, directors, or employees  
14 do have to file a proof of claim if they wish to assert one  
15 based on indemnification, contribution, or reimbursement.

16 THE COURT: All right.

17 MS. VANLARE: I believe other changes are  
18 conforming changes in line with the procedure that I've  
19 outlined with respect to the Gemini lenders and the ad hoc  
20 group lenders. We do -- we did add some language that if  
21 you are a Gemini lender and you rely on your individual  
22 account page, that may be accessed through that Gemini Earn  
23 program's website and the mobile app, and is your  
24 responsibility to determine that the claim is accurately  
25 listed in such website and mobile app as that is the amount

1 that will be listed for the pre-petition claim and the  
2 Gemini master claim. And the idea there, again, is that  
3 claimants should verify the amount and see if they agree  
4 with the amount that Gemini has on its records as the amount  
5 owing to that particular lender, and of course as I've  
6 outlined earlier, to the extent that they believe that the  
7 amount should be greater, they have their right to file an  
8 individual proof of claim and we will -- against the  
9 debtors, and we will of course review that.

10 Next we have the --

11 THE COURT: All right -- go ahead.

12 MS. VANLARE: Thank you, Your Honor. Next we have  
13 the publication notice. I believe that just has clarifying  
14 changes, and again, changes consistent with those that I've  
15 outlined already, so I'm not going to repeat them.

16 As part of the exhibits to the order, Your Honor,  
17 we've also included a Gemini bar date notice. So, Gemini  
18 will be sending a notice to the Gemini lenders and  
19 distributing it. Again, Gemini has as part of the program  
20 been the party that the lenders have dealt with and they've  
21 received information that way, so we're staying consistent  
22 with that and so Gemini will be distributing the bar date  
23 notice to get the information out to the Gemini lenders so  
24 that they may protect their rights and pursue their rights  
25 under the bar date order. I believe all of the changes to

1 that notice, again, have been consistent with what I've  
2 described.

3 THE COURT: All right.

4 MS. VANLARE: It will also include the general bar  
5 date notice, and that was a comment from the Committee, I  
6 believe, and again, we are trying to make sure that  
7 everybody has all the information.

8 I believe the remaining changes, Your Honor, are  
9 again consistent. I'm just scrolling to make sure the order  
10 also reflects some of these changes that I've described.  
11 Okay. I believe I've highlighted all of the substantive  
12 changes. So, I'm happy to now proceed with just addressing  
13 what I believe to be a resolution in principle of the  
14 limited objection that was filed by the Blankenships, who  
15 are Gemini lenders, and what we have been discussing with  
16 our counsel prior to the hearing.

17 I understand that their concern is they want to  
18 make clear that nothing in the bar date order is a  
19 determination of the Blankenship's voting rights on any  
20 Chapter 11 plan presented in the cases, the nature or scope  
21 of any releases of the Blankenships in a plan, or a waiver  
22 of their right to object to any bankruptcy plan. We would  
23 also say that the proposed bar date order does not waive  
24 their right to challenge Gemini's authority to act as their  
25 agent outside -- other than filing the Gemini master proof

1 of claim, as I've described. And furthermore, inclusion of  
2 their clients claims in the Gemini master claim does not  
3 bestow any authority on Gemini to grant any third-party  
4 releases on behalf of the Blankenships, including that of  
5 Gemini and any releases of its directors or officers under  
6 any plan.

7 So, I think that again articulates in principle  
8 what we've discussed. I know that -- I'm sure parties will  
9 probably want to tweak the language, but with that, I will  
10 let other parties in interest weigh in. I believe, again,  
11 we have resolved all the issues in principle, so with that,  
12 I will stop and let other parties weigh in.

13 THE COURT: All right. Let me ask if there's  
14 anyone from the Blankenships who wish to be heard who filed  
15 a limited objection, and before I hear from them, I will  
16 note that I have gotten some papers that were filed after  
17 deadlines in this case. I know we got something filed at  
18 4:45 yesterday, and this objection was I think some five  
19 days after the deadline. The reason the deadline exists is  
20 to make sure that I have sufficient time to actually read  
21 and consider everything that you file, so it's very much a  
22 "help me to help you" kind of circumstance, and so that's  
23 why we always ask that people reach out to Chambers if  
24 you're going to get extensions, just so that I know to allot  
25 time, and if for some reason because of other customers here

1 of the Court I don't have the time, I can then warn you off  
2 and say, "I really won't have a chance to read it."

3 So, I just mention that. I'm not trying to scold  
4 anybody. I'm just trying to get the word out so that you  
5 all know. So, for example, some things were filed this  
6 morning. I had a calendar at 10:00 and that's a perfect  
7 example of just -- if something happens after 10:00, between  
8 10:00 and 11:00, I just don't have the opportunity. So,  
9 again, if you have any questions about extensions of time,  
10 I'm always happy to give people as much time as possible,  
11 particularly because that often reflects in negotiations to  
12 try to resolve issues and that is crucial to the bankruptcy  
13 process and consistent with the bankruptcy process. So,  
14 just -- but always just keep us in the loop. So, with that,  
15 I'll get off my soapbox and ask if the Blankenships wish to  
16 be heard in connection with the bar date.

17 MS. ASSI: Yes, Your Honor. Thank you. Stephanie  
18 Assi on behalf of the Blankenships. And Your Honor, I  
19 apologize. You know, the individual --

20 THE COURT: No, I don't need an apology. It's  
21 really -- I just want to keep people in the loop as to why  
22 we do what we do and how it operates to getting the business  
23 of the Court done and all of your needs addressed. So, I  
24 took your objection -- a lot of things in the objection  
25 really to be about the substance of things that aren't in

1 front of the Court today. So, for example, there's a  
2 discussion later on talking about what the plan says, and  
3 obviously none of this affects the plan as any -- everyone  
4 has all their rights. So, I think Ms. VanLare's comments  
5 really are a more precise way of sketching that out in a  
6 variety of different contexts that the bar date order is  
7 simply that, the bar date order. But more to the point, let  
8 me ask you if Ms. VanLare's explanation of things on the  
9 record does resolve your objection.

10 MS. ASSI: Thank you, Your Honor. Not fully. I  
11 think that we are close, but there's a couple things that I  
12 would just like to address that I don't feel were in the  
13 revised proposed order.

14 THE COURT: Again, remember that this is the bar  
15 date order and we are not -- I don't want to hear about  
16 people's substantive legal rights, which were all preserved.  
17 Nothing in the bar date order affects those legal rights,  
18 and so I don't normally see objections like this for that  
19 reason, but go ahead.

20 MS. ASSI: Yes, Your Honor. Thank you. I  
21 understand. My issue is with really the definition of what  
22 Gemini's authority is and with Gemini filing the master --

23 THE COURT: Why is that an issue for today?  
24 Nothing in the bar date order affects what Gemini's  
25 authority is or isn't. I think Ms. VanLare actually also

1 just made explicit what was -- what I think was already  
2 implicit from the notion of a bar date order as compared to  
3 an adjudication of anyone's rights.

4 MS. ASSI: I understand, Your Honor. The master  
5 claim -- if Gemini were to file the master claim as defined,  
6 it would encompass more than just the claims against the  
7 debtors and just for the repayment of claims. We had  
8 discussed a revised definition of that. The issue is that  
9 Gemini is a counterparty as well and is liable, and so if  
10 Gemini files this claim on behalf of all of the Gemini  
11 lenders and then when it comes time to -- to the plan,  
12 Gemini is acting on behalf of the claimants and access agent  
13 and (indiscernible) later and so --

14 THE COURT: Well, no. If you're talking about  
15 claims and the filing of claims and who is filing what  
16 claims on behalf of who, you had me at "Hello." If you are  
17 talking about somehow it being imputed about what Gemini's  
18 authority is to bind or not bind parties when it comes to a  
19 planet process, that is a totally separate issue. That is  
20 not what a claims bar date does. So, again, I don't know  
21 how I could be any more clear that this is not an  
22 adjudication of anybody's rights vis-à-vis anybody else.  
23 What the -- what I understand, that the changes that were  
24 discussed are consistent with the notion of a bar date order  
25 where what you're trying to do is give notice -- that's the



1 most important thing -- to people that they need to file a  
2 claim. And two, to provide for inappropriately efficient  
3 and administratively easy process so that people -- it's not  
4 too difficult for people to preserve their rights to be  
5 creditors in the case. That's what it really does. It's  
6 not here to adjudicate the implicit or explicit  
7 ramifications of Gemini, who was acting as agent for whom.  
8 That's not what it's doing. It's not an adjudication of  
9 claims.

10 So, again, I'm happy to hear things about notice  
11 and clarity as to who needs to file proof of claim, but  
12 again, before we start segueing into people's substantive  
13 rights, we are not there yet. We are not even remotely  
14 there yet. That's not what a bar date does and I --  
15 frankly, in my twelve-plus years on the bench, I've never  
16 had somebody argue that somehow a bar date notice acted to  
17 lock folks into their substantive legal rights, because  
18 that's not what it does. So, with that understanding, is  
19 there anything that you want to address in terms of your  
20 remaining objections as to notice and clarity of notice and  
21 ease and efficiency?

22 MS. ASSI: Thank you, Your Honor. Yes. Just as  
23 far as it's the authority of Gemini to file this proof of  
24 claim and what the scope of Gemini's authority is to file  
25 claims on behalf of the lenders. So, as long as it can be

1 limited to --

2 THE COURT: Well, why don't we just carve your  
3 clients out? We'll carve your clients out. Your clients  
4 will do -- with the exception of your clients, who can do  
5 whatever they want to do. Everybody else will be -- who  
6 would be covered by the other provisions. Let me ask Ms.  
7 VanLare if that's one possible solution to having an  
8 extended conversation about Gemini's role and vis-à-vis all  
9 the lenders.

10 MS. VANLARE: That would be fine with the debtors,  
11 Your Honor.

12 THE COURT: All right. So, we can do that.  
13 Anything else that you wanted to address?

14 MS. ASSI: No, Your Honor. The rest of what Ms.  
15 VanLare represented reflects our agreement.

16 THE COURT: All right. Thank you very much, and  
17 again, everybody has their "day in court" on their rights,  
18 their substantive legal rights and their rights as to a  
19 plan, so nothing today and particularly nothing in  
20 connection with today's request for a bar date order impacts  
21 that. So, your clients can rest easy on that.

22 All right. So, Ms. VanLare, what I will do is I  
23 will wait to get a revised version, and if for some reason  
24 there is a need to have a further conversation to address  
25 any outstanding issues after you reach out to any other

1 parties who were part of that conversation, just to let  
2 Chambers know and we are happy to schedule something, but  
3 I'm pretty confident you'll be able to get over the finish  
4 line on this. Thank you very much.

5 MS. VANLARE: Thank you, Your Honor. That sounds  
6 fine. Okay. Next, I'd like to move to the bidding  
7 procedures, and Your Honor, I'm pleased to report we do have  
8 a consensual form of order. Again, I think we filed -- we  
9 did file a revised order in Docket 191, which I know that  
10 you don't have in front of you --

11 THE COURT: I think I do now have that in front of  
12 me, so give me one second. I have a lot of things in front  
13 of me, so give me one second to locate that particular item.  
14 All right. Could you just hand me that -- 191. Thank you.

15 All right. I think I have 190. I just got that  
16 as you were talking earlier. And I think the other ones  
17 that I have are -- as I said before are 186, 185. And I  
18 just want to make sure that I don't have the others. If you  
19 can give me one more minute?

20 MS. VANLARE: Of course, Your Honor.

21 THE COURT: Oh, actually I do. 191. Sorry.  
22 Blackline to proposed order. I have it front of me. So,  
23 thank you for your indulgence as I scoured my desk for it.  
24 But having it located will make life a little easier. So,  
25 take it away.

1 MS. VANLARE: Thank you very much, Your Honor.

2 And we did finish and finalize all the negotiations, I  
3 believe, during the hearing. So, I will try to present what  
4 I think is the final agreed form. I think we had gotten, as  
5 I said, a resolution on almost everything right before. So,  
6 I will walk through the black line and explain some of the  
7 changes that were made and then, of course, if anybody has  
8 any issues with what I've said, I'm sure they'll make them  
9 known.

10 THE COURT: All right. And I would assume that  
11 you'll go through the ones that you just made and any  
12 earlier ones leading right up to the hearing to the extent  
13 you want to publicize those to the larger group.

14 MS. VANLARE: Yes. We filed a cumulative black  
15 line.

16 THE COURT: Oh, all right. Great.

17 MS. VANLARE: I'll go through all of the changes.  
18 And the black line, Your Honor, and for anyone else who's  
19 following electronically, starts on page 45 of the pdf. So  
20 Your Honor, it's roughly half way through if you have a  
21 printed version.

22 THE COURT: Yeah, I have Exhibit B right in front  
23 of me, so I have -- I'll use the page numbers staring with,  
24 I guess -- I guess the first page of the ones at the bottom  
25 center. So the order itself has page number 2, the Exhibit

1 B is obviously page number 1 in that. But you can also  
2 refer to paragraphs, obviously, as well.

3 MS. VANLARE: Okay. Perfect. Perfect. So the  
4 first substantive changes are on page 5. So we've added a  
5 proviso, this is a comment from the Committee. That the  
6 Committee reserves the right to object to any modification  
7 of the sale schedule that's set forth below. And to any  
8 modification to the order dates or the deadlines. So that's  
9 with respect to the timeline that we've laid out that  
10 immediately follows that's in the chart.

11 We've also made some tweaks to the timeline,  
12 namely -- and this also reflected comments from the  
13 Committee. We have put the stalking horse designation  
14 deadline as proceeding the bid deadline, but we do retain  
15 the right to designate a stalking horse bidder at a later  
16 time. And extending that deadline in consultation with the  
17 consultation parties provided that we provide notice of any  
18 such extensions on the docket. The idea here, I think,  
19 we're all similarly situated in that we want to maximum  
20 value for the creditors and so this -- again, is what we  
21 think is a minor change while preserving flexibility to the  
22 extent we believe that having extra time for stalking horse  
23 may be appropriate to maximize value.

24 We've also built in some times here to provide a  
25 stalking horse designation and then, we've -- this is

1 actually in -- prior to the changes. We had provided for an  
2 opportunity for parties to object to a stalking horse  
3 designation. And if someone objects there, we would ask for  
4 a hearing. But if no one objects then there's no need for a  
5 hearing. And so, there is a built-in time here for that.  
6 The bid deadline is June 19th as we had previously outlined.  
7 And I think that the other dates remain the same.

8           The other change that we made, and it really kind  
9 of permeates a lot of the order and the various exhibit, is  
10 a deadline for DCG and that's June 19th to identify whether  
11 it or any of its insiders or controlled affiliates will  
12 submit a bid or whether any newly created entity that's  
13 wholly owned or directly or indirectly controlled by DCGs  
14 insiders or controlled affiliates, other than by virtue of  
15 its existing equity ownership in the Debtors intends to  
16 submit a bid. And the basic idea here, Your Honor, is that  
17 if DCG or any of its -- and I'll use the term loosely,  
18 related parties -- obviously, we've very explicitly  
19 outlined, you know, affiliates and insiders and that's all  
20 in here. But the idea is if anybody, DCG or its insiders or  
21 controlled affiliates want to bid on any of the assets, they  
22 do identify that and at that point, they will not have the  
23 consent rights with the respect to the sale of GDT or along  
24 the way other than the final consent to sell the asset  
25 because it is DCG's asset.

1 THE COURT: Thank you, that's helpful. Let --  
2 what's next?

3 MS. VANLARE: Next page, that's page 6. We've  
4 added a footnote here clarifying that any reference to the  
5 Debtors in the bidding procedures order or the bidding  
6 procedures means that the Debtor's acting the sole and  
7 exclusive direction of the special Committee of the board of  
8 directors of Genesis Global Holdco. The special Committee,  
9 as we've noted, consists of two independent directors.

10 THE COURT: All right. Next?

11 MS. VANLARE: Next, Your Honor, page 7 of the  
12 black line -- well, of the black line of the order. New  
13 paragraph 5, that same idea that if these that I've  
14 mentioned earlier, that if DCGs -- that if DCG or any of its  
15 controlled affiliates or insiders or related parties wishes  
16 to bid on an asset that their consultation consent rights  
17 terminate, other than with the ultimate consent right to  
18 approve the winning bidder and sell the asset.

19 We have paragraph 6 here. This was added based on  
20 a request by the Committee. The idea here is that the  
21 Debtors and their professionals will make reasonable efforts  
22 to provide the Committee's professional with reasonably  
23 timely updates regarding the sale process. This has  
24 certainly always been our intent and consistent with how we  
25 would run things. But I know that the Committee wanted this

1 in the order as well.

2 THE COURT: Fine.

3 MS. VANLARE: Next, the stalking horse and the big  
4 protections. So, this I believe was actually an oversight  
5 and that I think we had it in the e-motion but didn't have  
6 this language in the order. And again, it's just laying out  
7 that procedure that I described earlier where the Debtors,  
8 after designating a stalking horse, have -- we've  
9 purposefully created time in the timeline for parties to  
10 object if they wish to do so. The other change here,  
11 though, is that with respect to the big protections -- and  
12 I'm just looking to see if it's here or it may be later on.  
13 I believe this is all just, again, restating what we had in  
14 the motion and we're just putting it into the order.  
15 Paragraph --

16 THE COURT: Right.

17 MS. VANLARE: -- 8, that has the new language that  
18 I was about to explain, which is that to the extent that  
19 there is a stalking horse bidder with respect to a sale of  
20 GGT, which is the entity that is owned by DCG, that's a  
21 sister company to Genesis Global Holdco, which is the Debtor  
22 entity. That any portion of the breakup fee that's on  
23 account of GGT, that's payable to any such stalking horse  
24 bidder will be deducted from the value escribed to GGT  
25 pursuant to the plan. So basically, the idea here is that



1 GGT is not an asset of the Debtors. So, for example, if  
2 there was a bid and a breakup fee that's owed on account of  
3 the sale of all of the assets, both Debtor and non-debtor,  
4 the estate should not be responsible for the portion of the  
5 breakup fee on account of the value of GGT, which is a non-  
6 debtor asset.

7 THE COURT: All right. And let me just ask you,  
8 to the extent we're talking about a stalking horse bidder  
9 and the bid protections. I certainly understand that the  
10 notion of having this flexible process on notice, giving  
11 people a chance to object. If there's no objections, sort  
12 of having a streamlined process. Obviously, it is  
13 appropriate for the Court to sort of look at what the bid  
14 protections are to make sure they're consistent with sort of  
15 the normal protections that one receives in these  
16 circumstances. I suspect if there's no objection, then  
17 there probably will be a very little likelihood that that's  
18 an issue. But is there a way to have that put essentially  
19 on notice of presentment or some other vehicle that I get a  
20 chance to put my eyes on it, procedurally on essentially the  
21 same schedule?

22 Once I know there's no objections, I have no  
23 desire to slow the schedule down. But I'm open to  
24 suggestions on how to do that in most efficient way  
25 possible. I've sometimes seen that there are guardrails

1 around what bid protections might be and then that way, the  
2 Court can say, well, with that guardrails, I'm fine with  
3 whatever you come up with. But this is -- there's a lot  
4 going on here in such kind of predicting what appropriate  
5 guardrails might look like might be a little more  
6 problematic in a case like this. So I'm open to suggestions  
7 on how you want to handle that.

8 MS. VANLARE: So, Your Honor, I will note, I think  
9 the guardrails, we've already included. And you'll see  
10 that, actually, at the top of this paragraph. Paragraph 8.  
11 We've said the breakup fee shall not exceed three percent of  
12 the cash portion of the proposed purchase price. And the  
13 expense reimbursement. And I believe in the motion, it made  
14 sense, we broke even at \$50,000. So those -- so we kind of  
15 --

16 THE COURT: All right. So you have the guardrails  
17 in already. All right. I -- thank you. I had seem that in  
18 the blizzard of other things. I had forgotten it was in  
19 there, so that solves any concerns I have. All right. Next  
20 up?

21 MS. VANLARE: Next, next is paragraph 16.  
22 Paragraph 16, so this - in the -- this provides that in the  
23 event that the sales hearing and the confirmation hearing  
24 are held separately, and we have the sale including that of  
25 GGT occurring prior to the confirmation hearing, the

1 proceeds of the sale in GGT shall be agreed upon among the  
2 Debtors, the Committee, and the Ad Hoc Group of Genesis  
3 Lenders and DCG. And in the event no agreement is reached  
4 as determined by independent accounting firm to be selected  
5 by agreement among such parties. So the -- and this was in  
6 -- this reflects -- the Debtors had filed a restructuring  
7 term sheet that the parties had agreed to in principle, a  
8 non-binding term sheet earlier. And this reflects a term in  
9 that term sheet. So essentially, if the sale occurs prior  
10 to confirmation, then the parties agree to the allocable  
11 value of GDT. And they have the -- kind of a dispute  
12 mechanism in here of an accounting firm that's selected  
13 among the parties.

14 The proceeds of the sale of DGT shall thereafter  
15 be distributed in accordance with the plan or to the extent  
16 that a plan is not confirmed within 60 days following the  
17 sale of GDT or as otherwise provided in a plan supported to  
18 be entered into by the parties, the proceeds will revert to  
19 DCG.

20 THE COURT: All right.

21 MS. VANLARE: And the parties, the Debtors, the  
22 Committee reserve the right to file a motion to extend that  
23 60 day period. And I believe the parties agreed that DCG  
24 also reserves its rights to file a motion with respect to  
25 the time period. So I do want to make that clear.

1 THE COURT: All right. Thank you very much. Any  
2 other changes to highlight?

3 MS. VANLARE: If you give me one moment --

4 THE COURT: Sure.

5 MS. VANLARE: -- Your Honor, I just want to make  
6 sure. I think I hit of all of the substantive changes. One  
7 other change on -- that's in the bidding procedures. Page  
8 3. We'd just note that the assets are being sold -- it's a  
9 very broad term and so they include everything including  
10 claims unless those claims have been waived or released  
11 pursuant to plan support agreement entered into by the  
12 parties. We just want to make clear that obviously, we're  
13 not going to be selling if we agree to waive or release  
14 claims.

15 THE COURT: All right.

16 MS. VANLARE: I think the remaining changes are  
17 all consistent with what I've outlined under the order or  
18 are in the nature of cleanup changes. Oh, I'm sorry, one  
19 other change I should note. This is at page 9 of the  
20 bidding procedures. This is a list of information that  
21 parties have to provide -- potential bidders have to provide  
22 when they submit an indication of interest to the Debtors.  
23 We've asked that they include a statement specifying whether  
24 the potential bidder proposes to acquire claims and causes  
25 of action. As well as a description of the bidders

1 intention with respect to any relevant members of the  
2 Debtor's GGT and hold subsidiaries management team or other  
3 employees and a description of any contemplated incentive  
4 plan to the extent applicable. As well as the extent known  
5 of statement detailing whether the potential bidder is an  
6 affiliate or insider of DCG or any of its insiders.

7 THE COURT: All right. I see all those.

8 MS. VANLARE: I believe --

9 THE COURT: Anything else? I do see that there's  
10 some discussion about the involvement of the Committee in  
11 the process and due diligence and communications with  
12 restricted parties that are on 11 and 12.

13 MS. VANLARE: Yes. And I believe -- let me just.  
14 I think that that is consistent with what I described to  
15 Your Honor earlier that the Committee wanted language that  
16 we will provide information to the Committee on a regular  
17 basis about the sale process.

18 THE COURT: All right.

19 MS. VANLARE: And so this -- this is the same  
20 language that I described in the order. And I believe  
21 that's all of the substantive changes. In the order, the  
22 rest is cleanup or reflects the same types of changes that  
23 I've already outlined.

24 THE COURT: All right. Thank you very much.  
25 Anything else asl to this particular motion before I circle

1 the virtual room?

2 MS. VANLARE: I don't have anything else, Your  
3 Honor. Thank you.

4 THE COURT: All right. Thank you very much. So,  
5 let me ask the Official Committee, anything that they wish  
6 to be heard on in connection with this motion?

7 MS. PARR: Yes, Your Honor. Just a few remarks.  
8 And for the record, Amanda Parra with White Case on behalf  
9 of the Committee. I just wanted to note, Your Honor, that  
10 the Committee did file a limited objection and reservation  
11 of rights outlining several issues and comments that we had  
12 for the same procedures. And that was in the event that  
13 weren't able to resolve them prior to this hearing.

14 The issues we outlined in our objection were, in  
15 fact, really only a subset of the Committee's comments to  
16 the bidding procedures. We had many that we had actually  
17 worked very hard to adjust prior to filing our limited  
18 objection. And those were reflect in the revised order that  
19 Ms. Vanlare just walked us through. The remaining points  
20 that weren't reflected in our limited objection were largely  
21 related to ensuring proper controls and information rights  
22 for the Committee given DCG's involvement in this process.  
23 Those have also, for the record, been addressed and resolved  
24 in the revised order that we just walked through together.

25 I just wanted to state that we appreciate the

1 Debtors working with us and it felt like every settlement  
2 they were asked to accept, we wished had been better. So  
3 while we are agreed for purposes of today, we will need to  
4 continue to assess how the process is run and the further  
5 development in the case in our support for the motion and  
6 revised order is without prejudice to the rights of the  
7 Committee to seek further relief with respect to the sale  
8 and other issues in the case should that be necessary. I  
9 just wanted to provide that context for Your Honor. Thank  
10 you.

11 THE COURT: All right. Thank you very much. Any  
12 other party that wishes to be heard on this bid procedures  
13 motion?

14 MR. SAFERSTEIN: Your Honor if I may? Jeffrey  
15 Saferstein from Weil Gotshal Manges on behalf of Digital  
16 Currency Group.

17 THE COURT: Certainly. Please proceed.

18 MR. SAFERSTEIN: Your Honor, we've worked hard  
19 over the last several days to reach agreement with the  
20 Debtors and the Committee regarding the bid procedures as  
21 was outlined. This is a bit of an unusual sale given that  
22 the Debtors will be selling our moles on the behalf of the  
23 Debtors selling a non-debtor entity, which is an entity  
24 owned by my client, Digital Currency Group, and that's  
25 Genesis Global Trading.

1           So Your Honor, we're happy with the compromise  
2           that has been made and with the changes that were outlined  
3           by Ms. Vanlare in the agreement. We would like an  
4           opportunity though to view the order. These -- a lot of  
5           these changes were made during the hearing, so we would like  
6           to review. I don't expect there to be any issues as  
7           outlined, we're in full agreement as it was described. But  
8           we want to see the words on the page. And subject to that,  
9           we're fine.

10           THE COURT: All right. Thank you very much.  
11           That's a very fair request and I'm sure that's what Ms.  
12           Vanlare contemplates. Thank you for your comments. Any  
13           other party that wish to be heard?

14           MR. SAZANT: Yes. Thank you, Your Honor. Jordan  
15           Sazant on behalf of the Ad Hoc Group of Genesis Lenders from  
16           Proskauer Rose. I'd just like to echo the statements made  
17           by the Committee and you know, thank the Debtors, and GCD,  
18           and the Committee for working hard to resolve these issues.  
19           We've been working collectively as a group to try and come  
20           to a consensual order over the past few days and up to the  
21           minutes before this hearing. And I think Ms. Vanlare walked  
22           through what we agree is an acceptable order.

23           THE COURT: All right. Thank you very much. Any  
24           other party that wishes to be heard.

25           MR. ZIPES: Your Honor, Greg Zipes with the U.S.



1 Trustee's Office. Obviously, the changes reflect a lot of  
2 work by various parties in interest. My office did have  
3 some issues we believe were addressed on the immediate  
4 basis. But one issue that we raised with the Debtor is the  
5 question of whether there needs to be a consumer privacy  
6 ombudsman that's been here based on the privacy policies of  
7 the Debtor. And that would have to be resolved one way or  
8 the other before any sale. There are deadlines for that as  
9 well.

10 I believe that we saw a policy that was provided  
11 to us. I don't know that we've seen all of the policies.  
12 We're leaving it to the Debtor's burden, which we're happy  
13 to review more policies as appropriate. But it -- we're  
14 just reserving our right in that regard if there was a need  
15 for privacy ombudsman and hopefully, we'll get that  
16 resolved. In the meantime, takes an accessory. In Celsius,  
17 a provision was put in the order directing the appointment  
18 of an ombudsman, but obviously if it's not appropriate here,  
19 it's not necessary.

20 THE COURT: What's your understanding of the  
21 relevant timing?

22 MR. ZIPES: Well, it has to be done before any  
23 sale. The privacy ombudsman has to be appointed and has to  
24 file a report. And there are various requirements under 332  
25 of the Bankruptcy Code. And it deals with whether the

1 Debtor has privacy policy. So, for example, if the  
2 understanding of the customers is that their information  
3 would not be sold to a third party, and that was the privacy  
4 policy, then a consumer privacy ombudsman would have to be  
5 appointed in that instance to advise the Court. And here, I  
6 -- at least from what we've reviewed, there no such policy  
7 in place and the consumer, the customers who signed on are  
8 not necessarily -- they didn't restrict their personal  
9 information in that regard. So, Your Honor, I know we're  
10 coming up on other objections and -- but I'm just noting  
11 that as an issue that my office is observing its rights on.

12 THE COURT: All right. That's fine. I don't know  
13 if Ms. Vanlare wants to comment on that issue.

14 MS. VANLARE: Yes, Your Honor. I -- yes, we did  
15 have some discussions with Mr. Zipes on that issue. We're  
16 still reviewing whether or not it's applicable. You know,  
17 it somewhat of a different situation with us than with some  
18 of the other cryptocurrency cases because we have -- we have  
19 -- our creditors are lenders pursuant to individual master  
20 loan agreements. So, we're still reviewing as to whether  
21 and what extent the privacy policy is applicable and which  
22 policy may or may not be applicable. And how that --  
23 whether or not any of that is implicated in the sale  
24 process. And there's obviously also an interaction with the  
25 next issue on the agenda, which is the redaction issue.

1           So I would posit, Your Honor, that we don't need  
2     to solve that today. I think we have plenty of time and I  
3     think that it will be more fruitful to have further  
4     discussion on this issue to the extent necessary at a later  
5     hearing.

6           THE COURT: All right. I will leave the parties  
7     to have discussions about what the agreements actually  
8     provide and whether they implicate the Bankruptcy Code in  
9     the way of requiring a privacy ombudsman. And we'll discuss  
10    it as necessary at the hearing. And obviously, if I can be  
11    of any assistance in that you'll let me know and we'll --  
12    but I appreciate the issue being raised and the timing being  
13    framed so we sort of know we're all on the same page, so.  
14    All right. Mr. Zipes, anything else from your office?

15          MR. ZIPES: Your Honor, just in that regard as a  
16    suggestion. The motion is ministerial in nature and if the  
17    party -- sometimes the parties come to an agreement, and I  
18    would just note that for the Court. I know the Court is very  
19    flexible in terms of entering orders as -- if parties are in  
20    agreement.

21          THE COURT: Yeah. No, I have certainly seen those  
22    done essentially presented as a consented to approach in  
23    terms of an order. And so, if you find yourself there, I'm  
24    obviously open to suggestions on the most efficient way to  
25    get that done and we'll see. You'll let me know if we do

1 find ourselves there. All right.

2 MR. ZIPES: And Your Honor, just --

3 THE COURT: All right.

4 MR. ZIPES: -- just one other things to raise and  
5 I apologize, Your Honor, and very briefly. The bidding  
6 procedures obviously involve non-debtor in the sale of  
7 non-debtor assets and this -- these are just bidding  
8 procedures, so we're just -- as everybody else is, reserving  
9 our rights to see the stalking horse and to see what the  
10 final arrangement is. And we -- and the parties have been  
11 very cooperative in getting us the information that we  
12 request. So we would expect that to continue, Your Honor.

13 THE COURT: All right. Fair enough. Thank you  
14 very much. Any other party that wishes to be heard on the  
15 bidding procedures motion? All right, hearing no other  
16 responses, although I think Ms. Vanlare, you were getting  
17 ready to chime in?

18 MS. VANLARE: Yes, Your Honor. Just one  
19 administrative matter which is Your Honor, we are anxious to  
20 embark on the sale process and we think that timing is of  
21 the essence. We will work to submit a proposed revised  
22 order to Your Honor later today. And if there's any way, we  
23 would request, Your Honor, to have that entered. It would  
24 greatly help us in making sure that we launch.

25 THE COURT: Fair enough. I'm happy to get to it

1 as soon as I can, and I also will so order the record that  
2 you have the ability to move forward consistent with the  
3 relief you've requested today. And in consistent of the  
4 grant of the motion, which I'm just about to do provided the  
5 motion is appropriate in the facts and circumstances of the  
6 case and consistent with applicable law and makes good sense  
7 given all the facts and circumstances here.

8 I know there's some very unusual aspects of this  
9 in terms of the sale of a non-debtor and I appreciate the  
10 parties working together to navigate the ins and outs of all  
11 that in a way that allows the process to go forward while  
12 reserving folks rights to see what actually comes to pass.  
13 And -- but I'm happy to grant the motion. And so, my so  
14 ordering on the record, allow the Debtors and the other  
15 constituencies here to start moving forward consistent with  
16 the grant of relief.

17 MS. VANLARE: We appreciate that very much Your  
18 Honor.

19 THE COURT: All right. What's next?

20 MS. VANLARE: Last on the agenda is a series of  
21 motions that have been filed by the Debtors and by the  
22 Committee. Your Honor, seeking to redact and seal  
23 information relating -- specifically relating to creditors  
24 and other parties in interest. Your Honor, I'll make some  
25 brief remarks and I'm sure that the Committee will have

1 remarks as well on this issue. As we've noted earlier,  
2 confidentiality is critically important here. Your Honor,  
3 we've certainly heard requests when we -- before we  
4 commenced these Chapter 11 cases and during these Chapter 11  
5 cases that the preservation to confidentiality with respect  
6 to parties identities and personal information is of upmost  
7 importance to creditors. And certainly as the Debtors, we  
8 are receptive to those concerns and wish to protect, you  
9 know, that information to the extent that it is commercially  
10 sensitive and/or protects our creditors both from financial  
11 risks as well as physical harm that we've heard that that is  
12 also an issue.

13 And as I'm sure Your Honor is aware, and we  
14 obviously had these discussions earlier at prior hearing, it  
15 is of particular import in cryptocurrency cases where  
16 parties have been subject to financial and phishing schemes  
17 and have been subject to threats of physical harm. And to a  
18 certain extent, we also -- you know, when we filed the case,  
19 we wanted to preserve rights based on the feedback we had  
20 received from the creditors. But in particular, wanted to  
21 see where the Committee stood on this issue. We're  
22 obviously very mindful of where the Committee stands as a  
23 representative of the unsecured creditors in this case. And  
24 we understand the Committee does feel very strongly --  
25 because I'm sure you saw and I'm sure they will explain

1 themselves about these issues.

2 So, with that introduction -- and again, just  
3 underlining how important we believe as the Debtors these  
4 issues are to our stakeholders. I just wanted to note that  
5 the types of parties that are subject to our motion -- and  
6 then the Committee, I'm sure, will want to go into the  
7 relief that the Committee is seeking in its motion.

8 With respect to the motions we've filed -- and  
9 it's really relates to a number of filings and pleadings and  
10 papers in this case, you know, including the creditor list,  
11 the schedules, the notice lists, any other pleadings. We  
12 would like to redact many potential counterparties.  
13 Obviously, Your Honor, we're embarking on a sale process.  
14 It's critically important that to the extent there's  
15 information about potential bidders. We view that as  
16 commercially sensitive and we would ask --

17 THE COURT: So, let me ask you about that.

18 MS. VANLARE: Yes.

19 THE COURT: The word potential in front of  
20 counterparties. Obviously, it's very easy for us to --  
21 there's certain things in your motion that are very clearly  
22 anchored in this -- in the sense it's very easy to figure  
23 out what it covers and what it doesn't cover. And so the  
24 idea, for example, there was a discussion about litigation  
25 -- future involving litigation might be covered by some sort

1 of NDAs or some other rule that required those proceedings  
2 to stay confidential. I get that's definable. It's  
3 identifiable. And certainly, there are times when folks  
4 say, well, we ventured into negotiations with these folks  
5 and their identity is not appropriate to be on the public  
6 record. The word potential is the thing I'm just trying to  
7 figure out for purposes of commercial information what to do  
8 with that because obviously, if you're having negotiations  
9 with folks, aware those would be interrupted by  
10 identification of the parties. I think you would be very  
11 hard to argue that isn't commercially sensitive.

12 No one came in the American Airlines case and  
13 started sharing information about who they might want to  
14 merge with whatever the newspapers said. So -- but I guess  
15 the question is how are we supposed to understand the  
16 universe here when you say potential counterparties what  
17 that means for the context of the specific relief.

18 MS. VANLARE: Yes, Your Honor. So, what we're  
19 trying to get at are parties that may be potential bidders  
20 for the Debtor's assets. So, for instance, as is typical,  
21 there are a number of parties that the Debtor's advisors are  
22 proactively reaching out to solicit interest. There are  
23 parties that expressed interest in participating in the  
24 process and that's the universe of parties that we want to  
25 keep confidential because, again, for the reasons I



1 described. And I think you identified just now there is  
2 sensitivity around who they might be.

3 THE COURT: So, I guess, would the notion be a bit  
4 in the drafting that -- to draft something that would, in  
5 your view, reflect what you just said. That is parties who  
6 have actively reached out to the Debtors to ask to be  
7 involved in the process or parties that the Debtors and  
8 their professionals have reached out to as appropriate  
9 parties that might want to be involved in the process. In  
10 other words, it doesn't cover everyone. There's somebody --  
11 but somebody's made a reasoned, professional judgment that  
12 these are the folks who are appropriate to include. Is that  
13 the kind of thing you have in mind?

14 MS. VANLARE: Exactly. And the only tweak that I  
15 would make to what you just said, Your Honor, is parties to  
16 whom we have reached out or may reach out.

17 THE COURT: Yeah.

18 MS. VANLARE: So somebody who's --

19 THE COURT: Yeah, absolutely. Absolutely. And  
20 you can certainly dress that up much nicer than what I just  
21 said, but it would be after consultation with constituencies  
22 including the Committee, including your financial advisors,  
23 et cetera, et cetera. So I think my sense for U.S.  
24 Trustee's Office, who obviously can speak for itself in a  
25 moment, but what I think they're most concerned about is

1 sort of a blank check. Meaning that somebody can  
2 essentially say, well, that now means everybody, or it  
3 doesn't mean everybody or it's cover. But I didn't get the  
4 sense that what you're asking, frankly, and that there are  
5 easy ways -- I think it's fairly easy to put some language  
6 around that to flesh out the contours of that.

7 MS. VANLARE: Yes, Your Honor. And thank you for  
8 the opportunity to clarify. I think that's exactly right in  
9 terms of what we're seeking.

10 THE COURT: All right. So potential  
11 counterparties I get, and then I think I jumped the gun a  
12 little bit by discussing litigation counterparties.

13 MS. VANLARE: Yes. And why don't we talk about  
14 that one because it's also fair enlaced or a cabined  
15 category. So there it's a litigation parties as well as any  
16 regulatory agencies. So -- and these may be proceedings or  
17 inquiries that are expressly confidential. You know, either  
18 filed under seal or we've received, you know, instruction to  
19 keep them confidential. We would seek that we are permitted  
20 to redact those parties.

21 THE COURT: All right. I think I understand where  
22 you're coming from. And again, I guess that's also  
23 potentially subject to a verification in the sense of here's  
24 the particular party. Here's the particular proceeding  
25 and/or order agreement, et cetera that makes this

1 confidential.

2 MS. VANLARE: Yes, Your Honor.

3 THE COURT: All right. And so, so -- thinking  
4 about those folks or any other folks that are -- that we  
5 should -- folks or categories we should discuss in the --  
6 that are institutional creditors/lenders in this case. So  
7 we've identified two that -- counterparties in litigation,  
8 counterparties -- is there anybody else who's on your list?

9 MS. VANLARE: So I would say in terms of the  
10 institutional creditors, you know, our motions had asked to  
11 redact information, addresses, of institutional creditors to  
12 the extent the institutional address is, in fact, a home  
13 address. We were made aware that there's a number of  
14 creditors who are institutions but whose business address is  
15 their home. And they really share the same concerns  
16 relating to, you know, threats of kidnapping and personal  
17 safety as individuals who -- you know, whose information of  
18 that type would be protected. So that was what we had  
19 sought in our motion. I know that the Committee would like  
20 to expand that relief to cover the names of institutional  
21 creditors as well. So, perhaps we can table that until they  
22 present their motion.

23 THE COURT: Yeah. My thought is -- well, for  
24 purposes of how to proceed here is that we'll address the  
25 Debtor's requests here from the U.S. Trustee's Office then

1 we can get to the Committee's more expanded request, which I  
2 think seeks to treat institutional creditors the same way  
3 we're treating individual creditors for a variety of  
4 reasons. But I understand the -- your request dealing with  
5 addresses is essentially a recognition, in your view, of  
6 that some folks are almost in hybrid situation. So they're  
7 institutional creditors for some purposes, but when you  
8 start naming home addresses that it takes them out of that  
9 realm for purposes of 107.

10 MS. VANLARE: That's exactly right, Your Honor.

11 THE COURT: All right. Any other comments as to  
12 the particular categories of institutional creditors that we  
13 should talk about and then we can move back to the  
14 individuals in a minute?

15 MS. VANLARE: Not from us, Your Honor.

16 THE COURT: All right. And so as to the  
17 individuals, it sounds like there's essentially an  
18 agreement, nobody's opposing the notion of protecting home  
19 addresses and email addresses that the sticking point seems  
20 to be two things. One is the names and the second may or  
21 may not be a sticking point, I couldn't tell when I read the  
22 U.S. Trustee's comment if they were talking about, well,  
23 we're okay with all this if people express a concern or if  
24 they're fine with essentially -- well, all -- you know, if  
25 we talk about home addresses, it's all home addresses. But

1 -- so I understand those to be the two flashpoints.

2 So I guess my first question is whether I'm  
3 missing anything. If you there's -- you think there's  
4 anything else where there's a dispute dealing with  
5 individuals.

6 MS. VANLARE: I think you've correctly addressed  
7 it as far as -- as far as I understand it. Yeah, we've  
8 asked to redact all contact information and names of  
9 individuals, again, based on the feedback we've received.  
10 And I believe the U.S. Trustee has objected to that and I'll  
11 let Me. Zipes express for himself --

12 THE COURT: Right.

13 MS. VANLARE: -- to the extent which he agrees  
14 with what we've asked for.

15 THE COURT: All right. Fair enough. All right.  
16 Mr. Zipes?

17 MR. ZIPES: Thank you. Your Honor -- and I do  
18 appreciate the discussion you had with Ms. Vanlare about the  
19 institutional creditors in connection with the retention  
20 applications and I -- my office generally has no issues in  
21 that regard with redactions. Turning to the Debtor's  
22 request, I don't want to bring up the Committees at this  
23 time and I want to keep this as brief as possible. The --  
24 Your Honor, in this case, the United States Trustee has  
25 agreed to redaction of the individual addresses as stated.

1 We've attached the notice of the unsecured creditors  
2 Committee appointment and that reflects really the agreement  
3 for individuals and institutions.

4 And I don't want to put anybody on the spot, but  
5 there was really no issue or debate among the Committee  
6 members at that time about any of this. So we put it on  
7 and, in fact, we're the ones that suggested separate emails  
8 for the purposes of this case because there is -- there are  
9 these legitimate concerns about phishing and various other  
10 issues. Your Honor --

11 THE COURT: Yeah, I was -- I was rather alarmed to  
12 see there's a footnote in one of the papers. I think the  
13 last time we talked about this, we -- I think I mentioned a  
14 notice of phishing attempt. And then, I think by the time  
15 this paper was filed, there was, I think, a fourth  
16 supplemental notice of phishing attempts and it just goes to  
17 show that, you know, we're not in Kansas anymore as they say  
18 in the Wizard of Oz. It is a brave new world in terms of  
19 trying to protect information. And 107 may be slightly  
20 behind the times in terms of the way it thinks of it because  
21 everyone is profoundly concerned about that.

22 I do appreciate the Committee's supplemental  
23 declaration not only in the context of its application, but  
24 just in terms of the general context at large. And so --  
25 and I just wanted to get sort of this speech out, Mr. Zipes,

1 just for purposes of the way I think about the public  
2 interest involved.

3 MR. ZIPES: Mm-hmm.

4 THE COURT: Obviously, there's a great interest in  
5 transparency in bankruptcy proceedings. Right? And so that  
6 bankruptcy cases can function efficiently and appropriately  
7 and for the interests of all the stakeholders. But  
8 transparency is not necessarily sort of in a vacuum. And I  
9 think, certainly looking at the comments of State Judge Wild  
10 or the judge in Delaware who dealt with this, there seems to  
11 be a concern about trying to have the value of transparency,  
12 so the cases work effectively while at the same time, not  
13 having creditors who after all didn't file a case be  
14 potentially victims. Right?

15 They're not here voluntarily. It's a little  
16 different in terms of parties coming for a court voluntarily  
17 or, you know, creditors are not here necessarily of their  
18 own volition. And so, to not add essentially insult to  
19 injury by putting in the crossfire on this. Obviously, the  
20 Code and what 107 says is what it says. But I just wanted  
21 to give you my mindset about how I'm trying to think about  
22 this from a very practical -- people here in the bankruptcy  
23 court but as a multi-party endeavor, the -- some of these  
24 issues get a little harder to manage. And I just wanted to  
25 give you sort of my -- the kind of values I'm trying to

1 promote.

2           So, let me start with the institutional creditors  
3 with your office. Ms. Vanlare gave some helpful, I think,  
4 additional comments about the potential counterparties and  
5 litigation counterparties to sort of put anchors around that  
6 to address any concerns your office might have about it  
7 being not anchored to a specific circumstance. So maybe we  
8 could start -- as we started with her -- start there with  
9 your office's -- your current thinking on those -- on say,  
10 potential counterparties as modified by Ms. Vanlare's  
11 comments.

12           MR. ZIPES: Your Honor, thank you for focusing on  
13 perhaps the easiest question first, which I don't think my  
14 office has an issue with any of that. And --

15           THE COURT: All right. Thank you. And so, I  
16 guess, for litigation counterparties, is that -- would you  
17 reach the same conclusion again? The trust, but verify that  
18 -- what's -- it's anchored to something specific?

19           MR. ZIPES: Yes. Yes, Your Honor. We're okay.

20           THE COURT: All right. And I guess, going right  
21 down the list. There's the -- I guess, the third category.  
22 The third of three that was identified by the Debtors is the  
23 institutional creditor where there's a home address. And  
24 what's your office's thinking on that?

25           MR. ZIPES: Okay. So, Your Honor, I should give a



1 little bit of background. I -- a lot of smart people are --  
2 have been thinking about these issues and my office is --  
3 has a certain viewpoint, obviously, on it. And the Court  
4 did mention the Delaware court. One of them is having it is  
5 what it is, and we have to deal with it as it is as opposed  
6 to what we might want it to be. And so, as to the facts of  
7 this particular case, we have what are termed sophisticated  
8 creditors and the word institutional -- accredited creditors  
9 has been used as well, which has an SEC definition. I'm not  
10 sure if that's the context that's being used, but parties in  
11 this case generally are deemed sophisticated, and we're just  
12 bringing that out as a fact here.

13 We are concerned about threats, legitimate threats  
14 to people. We take those very seriously as does everybody  
15 here. But my office did reach out and ask for specific  
16 people to contact us if there were specific threats and we  
17 would deal with them.

18 THE COURT: Well, the problem -- I saw that  
19 reference in your papers. I will say, just to get it out  
20 there. I'm going to reject the notion that I have to tie  
21 this finding based on specific threats. I think that turns  
22 the inquiry sort of upside down. And obviously, we're  
23 talking about threats. We're talking about 107(c) and we're  
24 talking about cause, risk of identity theft or unlawful  
25 injury. Frankly, any injury that's inappropriate.

1           So, I don't think -- if you think about the way  
2 addresses and emails have been handled in the all the cases  
3 for everybody I think is on the same page. Nobody's asked  
4 somebody to come forward and say, are you worried about your  
5 address? And I think it's, frankly, unworkable on the sense  
6 that individual creditors are not going to do that. That  
7 imposes a hurdle on them in a bankruptcy case that's higher  
8 than it should have to be.

9           And the other thing I will say, in a way they have  
10 come forward because the Committee represents them. So  
11 we'll get to the Committee's motion in a second. Right?  
12 They represent the unsecured creditors. So they are in --  
13 they are there to protect those folks and that's why they  
14 filed the motion. So, I don't -- I think at a certain point  
15 where somebody says I've gotten a threat, it's already too  
16 late. Right? You can't put the genie back in the bottle.  
17 And again, I think between the declaration that the  
18 Committee supplied, the record that we've already had in the  
19 prior -- in our prior hearings, things like the notice of  
20 phishing attempt, I think it's pretty clear that this is not  
21 a theoretical problem.

22           And I also would note, while I did see one case  
23 made a reference to imminent harm, I don't think that's the  
24 standard. The standard is that they're -- the Court may  
25 protect a person -- one second here. I don't -- imminent

1 harm is not the standard is that it's -- I think you have to  
2 have a risk. And I think Judge Garrity talks about it in  
3 Endo that way. So, I'm afraid that the imminent risk of  
4 harm is too high a standard. And I think it's not the  
5 standard here for a good reason. So I'm uncomfortable with  
6 requiring individual creditors to come forward and have to  
7 be heard as to their concerns. Because I think if we do  
8 that, then I don't know how we do it for some creditors in  
9 some buckets and then not do it for all creditors. Right?

10 I don't know how we would distinguish to say,  
11 well, your -- the burden for you is less and we'll  
12 essentially in local parentis, look at your concerns. But  
13 for you, you've got to be heard from. Now, I could see --  
14 again, I'm trying sort of predict what your office might  
15 think about it, and I may be woefully off. But I can see  
16 that you might say, well, I want to have some verification  
17 that this is for this home address for an institution that  
18 this is exactly how it is or whatever. I have no problem  
19 with verification of that. I just don't want to put the  
20 burden on the creditor to have to come forward and make  
21 itself be known that way. But I have no problem consistent  
22 with what we talked about for counterparties in the  
23 litigation to get verification that that is, in fact, the  
24 case. I don't think I want some sort of general rule that  
25 allows us to say, well, it might be.

1           So I'm not saying that. I think we'd have to  
2       verify it the way we'd verify any other creditor --  
3       institutional creditor that we're discussing in the other  
4       categories. Does that help your office at all, Mr. Zipes?

5           MR. ZIPES: Your Honor, so my understanding is,  
6       based on what you're saying, if institutional creditors come  
7       forward and it's in fact their home address, then that might  
8       fall under the exception that we're -- that you're referring  
9       to?

10          THE COURT: Right. Yeah, that we'd have to verify  
11       that. And we can talk about how to verify that whether  
12       that's -- I would image that would be in the context of  
13       discussions with the Committee. I would image the Committee  
14       would be happy to give it its statutory role to take on that  
15       and to work with your office as to how to verify that.

16          MR. HIGGINS: Your Honor -- oh, I'm sorry. Ben  
17       Higgins, United States Trustee.

18          THE COURT: Oh --

19          MR. HIGGINS: Just for the record.

20          THE COURT: Go ahead, I'm not sure how you all are  
21       handling this. If you need a moment to chat, I'm always  
22       happy to give it to you.

23          MR. HIGGINS: That's -- no -- I didn't mean to cut  
24       off Mr. Zipes. But Your Honor, I was just asking about the  
25       standard or discussing the standard. The standard is clean

1 --

2 THE COURT: Well, I don't want -- I'm not going to  
3 have you cut off Mr. Zipes to tell me the standard. I have  
4 the book in front of me. So, I'll hear from Mr. Zipes. If  
5 there's something where your office is chiming in because --  
6 by virtue of the sort of way decision are made, that's  
7 another thing. But Mr. Zipes does an excellent job in this  
8 Court and I'm more than happy to hear from him. And again,  
9 if you need a minute to chat, I'm fine with doing that. But  
10 I -- so, Mr. Zipes, if you need a moment and you want to  
11 talk about that, we are rapidly approaching lunch. And  
12 certainly, it may be that a break at lunch to sort of think  
13 about things makes sense.

14 MR. ZIPES: Your Honor, I don't have a problem  
15 taking lunch right now. But I think the point is under the  
16 standard, it's an undue risk of identity theft.

17 THE COURT: Right.

18 MR. ZIPES: And it's not the stand -- it's not  
19 imminent threat or whatever that wording was. Your Honor,  
20 I'm happy to go forward for a little while longer if people  
21 want a break, we (indiscernible).

22 THE COURT: Yeah, I'd like to go forward, but my  
23 thought would be -- I realize that in a changing landscape  
24 to ask your office's view on the fly is not necessarily  
25 something that you can necessarily pull that rabbit out of

1 your hat immediately. So my thought is that at some point,  
2 we'll take -- we can take a break once we get through  
3 things. I think my thought would be we'd at least have a  
4 discussion of all the issues. And then maybe take a break  
5 then and then come back at lunch to sort of wrap things up.  
6 That would be what I had in mind so we can get all of the  
7 issues out on the table and think about it. And take it  
8 from there.

9 So, with that, Mr. Zipes, anything else about  
10 institutional creditors from the point of view of the  
11 Debtor's motion?

12 MR. ZIPES: Yeah, Your Honor, I just -- in  
13 addressing that, I would just note that in Celsius,  
14 notwithstanding these notices that are filed, Chief Judge  
15 Glenn has not taken any further action in that regard. He  
16 made his ruling and it -- and the names are out there. And  
17 he hasn't taken any further action. I'm not sure how  
18 relevant that --

19 THE COURT: Well, I --

20 MR. ZIPES: -- that is or not to the discussion,  
21 but --

22 THE COURT: -- well, I -- is the notion that  
23 actual notices of phishing attempts isn't relevant when  
24 considering the potential harm to creditors whose  
25 identification is out there? I mean, I -- obviously Judge

1 Glenn is more than capable of handling this case. And I am  
2 sure that it is being handled with the highest degree of  
3 professionalism. I'm just saying in terms of understanding  
4 things and not relying on speculation. Right? That's what  
5 I understand the -- one of the concerns in the government  
6 circumstances like this tends to be that something is  
7 speculative, it's not rooted in actual events happening.  
8 Excuse me. And so, that's a common theme in sealing cases.  
9 I -- as an AUSA, I once submitted a declaration from the  
10 Chairman of the Joint Chiefs of Staff, and we had a  
11 discussion about whether the harms identified in connection  
12 with the sealing motion were real harms.

13 And so, that's the inquiry, you know, are they  
14 concerns? Are they specular or are they not? So, I  
15 understand that, but I guess my thought is I'm talking  
16 notice of those -- notices of phishing attempts just as some  
17 tangible evidence that that kind of a concern is not  
18 hypothetical.

19 MR. ZIPES: No. And Your Honor, I very much  
20 appreciate that, and I appreciate your desire to reach the  
21 right results here. But I will note that phishing is a new  
22 -- it's relatively a new phenomenon. And this argument can  
23 be used in any case, in any large mega case that is --

24 THE COURT: Well, that's a -- that's a fair point.  
25 That's a fair point. And I think the Code may need to be --

1 some of these issues may need to be rethought in the context  
2 of that so that folks who are creditors aren't victimized  
3 for appearing in proceedings in which they didn't volunteer.  
4 But I -- yeah, I get it. You're right. There are  
5 definitely the universality of some of these concerns is an  
6 issue. Although, I think Mr. Renzi's declaration identifies  
7 some of the unique aspects of cryptocurrency that makes some  
8 of these concerns a bit more acute in these circumstances  
9 based on -- at least with FBI and other government agencies  
10 have identified. But you're -- it's a fair point, Mr.  
11 Zipes. Anything else on institutional creditors before we  
12 go to the more limited issue associated with individuals?

13 MR. ZIPES: Yeah --

14 MR. PESCE: Yeah, Your Honor, it's Gregory Pesce  
15 just --

16 MR. ZIPES: -- oh, I'm sorry, Your Honor.

17 MR. PESCE: -- for the Committee. It's just on  
18 the institutional creditors -- we're --

19 THE COURT: Well, no but -- we're going to handle  
20 your motion separately.

21 MR. PESCE: -- yeah, we motion every couple days.

22 THE COURT: Yeah. No, I know you do. But I want  
23 to deal with each motion sort of separately.

24 MR. PESCE: I'd accept --

25 THE COURT: And so, so we can cabin off the issues



1 because they -- I know they do bleed into one another. So,  
2 Mr. Zipes, as to any other issues with institutional  
3 creditors that are the subject of the Debtor's request?

4 MR. ZIPES: Only that I'll make the observation,  
5 Your Honor, that the Debtor in its initial motion did not  
6 argue under 107(b). And the Debtors are well equipped to  
7 make that argument if they thought it was important. At the  
8 beginning of the case I know that 107(b) is an argument  
9 raised after the fact, but it wasn't at the beginning of the  
10 case. And again, Your Honor, I appreciate all your points  
11 and efforts here. There is -- so I'll move on, Your Honor.

12 THE COURT: All right. So, so I will consider for  
13 purposes of wrapping up this part of it that there's really  
14 no dispute about potential counter parties and litigation  
15 related issues, subject to the discussions we've already had  
16 about, sort of verifying and identifying the -- that  
17 universe based on specific things. And that as to the  
18 institutional creditors and the homme addresses, that that's  
19 sort of an open issue that you can -- your office can mull  
20 at a break, as to where you end up in light of the  
21 discussion. And so, as for individual creditors in the  
22 Debtor's motion, I think the only thing that's an issue is  
23 the names.

24 And to just sort of set the stage, I know that  
25 Judge Glenn in Celsius did not permit the names to be

1 sealed. Whereas in Judge Garrity in Indo did and that there  
2 are other judges, Judge Wiles and the Judge in Delaware, I  
3 think Tred is the name of the case, have similarly followed  
4 suit. So, I'm certainly aware there's different results out  
5 there with different theories. So, as to the names, Mr.  
6 Zipes, where's your -- of individual creditors, where does  
7 your office currently fall?

8 MR. ZIPES: So, Your Honor, as stated, we -- we're  
9 okay with not having the addresses. And I'll just note this  
10 about Indo, which was an opioid case, and we can go further,  
11 Your Honor, with Diocese cases, which I don't think anybody  
12 has mentioned. The survivors -- there are legitimate  
13 redaction concerns in those regards. But -- and the Court  
14 did talk about creditors being involuntarily brought into  
15 the bankruptcy case, I mean, that unfortunately is the case  
16 for every bankruptcy case. And I believe parties, at one  
17 point, were concerned about opioid and survivors of in the  
18 Diocese case, the Boy Scout cases, and we're dealing here  
19 with sort of commercial -- commercial parties, and I'm  
20 picking Your Honor's point. I understand that you don't  
21 look at it, necessarily, that same way. But I'm --

22 THE COURT: Well, I would --

23 MR. ZIPES: -- trying to be (indiscernible).

24 THE COURT: -- I would agree with your notion that  
25 I think the value of sealing and the importance of sealing

1 is heightened in cases where you're talking about victims of  
2 either opioid abuse or of sexual abuse. And so I would  
3 agree with you on that notion.

4 MR. ZIPES: And Your Honor, I would just as well  
5 state that the FBI warnings and what not in the crypto  
6 space, I mean, everybody shares those concerns. The Court  
7 routinely seals motions that have PII -- personally  
8 identifiable information, which is -- which is defined in  
9 the Bankruptcy Code and so -- and for that matter, my office  
10 is often contacted by creditors, debtors, executives, when  
11 there are specialized threats and the FBI does get involved  
12 and that's traditionally how it's handled if someone has a  
13 specific concern, they bring it to people's attention and we  
14 deal with it accordingly.

15 I think a blanket restriction here is problematic  
16 because really is not based on anything more than looking at  
17 other cases and you know, not looking at the facts of this  
18 case, which include no privacy policy that -- that these  
19 parties, apparently, were okay with their information being  
20 sold, maybe to third parties with no accountability and here  
21 they're arguing the point. So, I'm not --

22 THE COURT: So, well, that raises an interesting  
23 question to segway to, which is there's a thought about and  
24 it's raised in the context of institutional creditors, but  
25 it's the thought about these folks being customers whose

1 information can be sold, can be monetized and therefore, if  
2 the information is made available here, that that cuts out a  
3 source -- cuts and reduces and damages an asset that the  
4 Debtor's have that might be included in a sale that could be  
5 monetized.

6 I don't know that I have that -- a record here  
7 now, but if a record -- but you might imagine that an  
8 appropriate professional might be able to bring in somebody  
9 who says being familiar with the crypto space, this is the  
10 kind of information that is sold, this is what it's worth.  
11 This is what it might be worth here. Is that something that  
12 might provide protection under the different rubric of 107?

13 MR. ZIPES: Your Honor, I don't want to be unfair  
14 to Mr. Pesce, who has these arguments and the Debtor's, I  
15 noted, didn't think that this was a relevant argument with  
16 all of the professionals at the beginning of the case. I  
17 understand that sometimes, you know, that evaluation can  
18 change and I would just note that, again, if we're talking  
19 about -- in every large Chapter 11 case, creditor lists are  
20 listed; there are attempts with critical vendors to keep  
21 that list private.

22 But there are -- there is general disclosure about  
23 creditors in large cases, and again, we -- it has to be a --  
24 an undue risk of identity theft or some other damage and  
25 it's -- every large Chapter 11 case is going to be presented

1 with this particular issue. So I'm not necessarily talking  
2 --

3 THE COURT: Well, I'm talking about B where you're  
4 talking about protecting commercial information, but I  
5 realize I have jumped into Mr. Pesce's sort of area without  
6 -- without, even though I promised I wasn't going to. So,  
7 the lines can get blurry. So, let me ask you one other  
8 question about the individuals and the names, at least for  
9 folks who might be subject to the different privacy schemes  
10 in the UK and the EU or in Singapore.

11 I know that -- I've seen it framed in the various  
12 papers to say, well that -- the economic damage to the  
13 Debtor's is not cognizable under 107. But I was thinking of  
14 it in a different way. I'm sorry, let me be clear. The  
15 economic damage that might happen to the debtors under these  
16 privacy schemes, that is fines and the like, is not  
17 cognizable under 107.

18 But my concern is a different one, which is -- it  
19 talks about unlawful injury. Right? And certainly, these  
20 privacy schemes over which the Debtor's have zero control,  
21 right? So, they -- they can't reach out and say why don't  
22 you get pulled into this privacy scheme. Unlike -- unlike  
23 other circumstances where the Debtor's have some control  
24 over who the population -- who's covered by a particular  
25 category. They have no control. The EU, the UK, and

1 Singapore have enacted these schemes and you have people  
2 like privacy ombudsman in the EU that take these issues very  
3 seriously and have a different approach than the US.

4 But certainly, those schemes reflect a -- while  
5 they do not control, foreign law doesn't control and trump  
6 the Bankruptcy Code. On the other hand, if we're here  
7 thinking about injury, those countries have decided that  
8 their citizens are entitled to this privacy protection. And  
9 so if you violate those schemes in the view of those  
10 countries, you've created an unlawful injury. And so,  
11 because they've said this is the value entitled to  
12 protection.

13 Again, I think there's -- I have a view of trust  
14 but verify for these things. And that's even putting aside  
15 the economic damage that I -- to the Debtor's that I don't  
16 think is cognizable under 107 but might be cognizable under  
17 a different aspect of the Code because I think the idea that  
18 the estate would be -- would lose out on -- people would  
19 lose out on recovery because they would have to pay fines  
20 under these regulatory schemes in the millions of dollars.

21 I don't know what the likelihood of that is and I  
22 don't think I have the evidentiary record, again, something  
23 like a counsel list, expertise, and privacy issues in these  
24 various regimes. But what you are -- what's your general  
25 view, Mr. Zipes about the notion that these statutes in

1 other countries are identifying for their citizens what they  
2 consider unlawful injury?

3 MR. ZIPES: Your Honor, I'm appearing from my  
4 colleague's desk now because my computer seems to have shut  
5 off. So, I'm --

6 THE COURT: Oh, I'm very sorry to hear that.

7 MR. ZIPES: I --

8 THE COURT: That's what you always want to have  
9 happen in the middle of an argument.

10 MR. ZIPES: I was -- so, Your Honor, I apologize  
11 because I -- I believe that you were addressing foreign  
12 jurisdictions and their privacy --

13 THE COURT: Well, that's okay. I was more wordy  
14 than I needed to be. So, I'll say it shorter this time.  
15 Which is, what about the question that these privacy schemes  
16 in these three jurisdictions reflect their -- or reflect a  
17 notion that the loss of privacy is an unlawful injury? I  
18 mean, again, we're not -- that law doesn't trump the  
19 Bankruptcy Code, but the question is whether, essentially,  
20 those laws are a reflection of those bodies saying our  
21 citizens are entitled to this privacy and if -- and so if  
22 you violate what we think is their privacy under these  
23 regulations, that's an injury. It's an unlawful injury.

24 MR. ZIPES: Your Honor, I don't know. I read the  
25 Committee's response, and again, I don't -- I don't want to

1 be unfair to the Committee. I don't know that this is an  
2 issue in this case, but I would just state that Judge Glenn  
3 considered this issue in Celsius and if there is some  
4 specific privacy issue --

5 THE COURT: Well, he considered it -- the line  
6 from the opinion, that's what struck me, is the line from  
7 the opinion, obviously, we always address what arguments are  
8 made to us. The line in the opinion is, the Debtor's failed  
9 to show the public disclosure of UK or EU citizens personal  
10 data violation of these regimes, and I'm summarizing, would  
11 constitute an unlawful injury to those individuals because  
12 the financial penalties (indiscernible) would be imposed  
13 against the Debtor's under those laws.

14 So, it's framed as the financial injury to the  
15 Debtor's implicate 107, and I don't think it does. So, I  
16 would agree with Judge Glenn that way, but -- but the idea  
17 is whether -- and certainly in Indo, I think what Judge  
18 Garrity said is there's certainly a -- it's relevant to the  
19 notion of what is sensitive information for purposes of  
20 making that determination. It's not dispositive, it doesn't  
21 trump the Bankruptcy Code, but that it is informative.

22 MR. ZIPES: Yes, Your Honor, I think there would  
23 have to be some presentation by the Debtor on whether there  
24 are notes in connection with these privacy regimes if this  
25 Court enters an order, and Your Honor, that, again is not an



1 easy issue. But I don't know that we're in a position to  
2 make that argument for the Committee if they or the Debtor's  
3 if they believe that that's appropriate. I --

4 THE COURT: All right. And so, and Judge -- well,  
5 one other legal question, Judge Glenn sort of extended  
6 comity, he used comity as a -- as a sort of way of looking  
7 at this. I don't know if your office has a view about that  
8 or not. Because comity is discretionary. It's saying one  
9 law trumps another law, you're saying I'm going to give  
10 respect to that particular law in these proceedings, given  
11 the analysis that can be made under comity.

12 MR. ZIPES: Your Honor, just in this context,  
13 unless someone can come forward with really power arguments,  
14 this is the Bankruptcy Code and this is where we are at.

15 THE COURT: All right. Well, I got it.

16 MR. ZIPES: Okay.

17 THE COURT: But you realize you lost that issue in  
18 front of Judge Garrity, where you won it in front of Judge  
19 Glenn, so I'm just trying to sort of give you a chance to  
20 respond to the things that Judge Garrity relied upon when  
21 dealing with names. But that's fine. So, I think -- I think  
22 it probably makes sense to segway to the Committee's motion  
23 and what it seeks. I think I jumped the que a little bit in  
24 getting there and Mr. Zipes is trying to -- trying to be  
25 fair, procedurally, and caution me from getting too far down

1 that road correctly. So, with that, let me turn to the  
2 committee to T up what additional issues its raised and  
3 additional requests it wants to make.

4 MR. SAZANT: Briefly, Your Honor, if I may, really  
5 quickly, the Ad Hoc Group of Genesis Lenders filed a joinder  
6 to the Debtor's motion.

7 THE COURT: Yes.

8 MR. SAZANT: Not a joinder to the Committee's  
9 motion, but our arguments and our positions are much  
10 stronger -- much more aligned with the Committee's  
11 positions. We took essentially the same position. If it's  
12 appropriate, we would submit that the Committee can go first  
13 and we would join our argument to the committee's after  
14 that.

15 THE COURT: Okay. All right. So, let me hear  
16 from the Committee.

17 MR. SAZANT: Thank you.

18 MR. PESCE: Thank you, Your Honor. So, Gregory  
19 Pesce, White and Case, counsel to the Committee. The  
20 Committee filed its motion at Docket 137 and we have a reply  
21 at Docket 182. Before proceeding, I would just ask if  
22 there's any issue with admitting the declarations of Mark  
23 Renzi from Berkley Research Group, they're at Docket 156 and  
24 184. He's on the line and available for cross-examination,  
25 if anyone would wish to do so.

1 THE COURT: All right. Mr. Zipes, any objection  
2 to receiving his declaration?

3 MR. ZIPES: No, Your Honor. I may have a few  
4 questions later on, but I hope that I won't have any  
5 questions, but I want to reserve my right.

6 THE COURT: So, I will say the normal rule is the  
7 first hearing isn't evidentiary, so we'll have to figure out  
8 where we go from here.

9 MR. ZIPES: Sure.

10 THE COURT: But we'll cross that bridge when we  
11 come to it. So, Mr. Pesce, please.

12 MR. PESCE: No problem. So the Committee supports  
13 the Debtor's motion to redact the institutional lenders,  
14 personally identifiable information, which I'll call PII  
15 during my presentation. But with respect -- it -- in the  
16 Committee's view, it doesn't go far enough. Now, I can't  
17 speak for why the Debtor's did or did not try to seal all of  
18 the PII, but the Committee here is the fiduciary for  
19 unsecured creditors, which are the entire creditor body.  
20 There's no bank lenders, there's no bond holders. It's just  
21 the lenders that Genesis did business with prior to the  
22 bankruptcy case. And the Committee takes seriously the risk  
23 of dissipation of the assets, which are largely comprised of  
24 cause of action, some technology, some employment agreements  
25 and then the crypto and the good will of the lenders that

1 provided that crypto.

2 THE COURT: But I don't understand the goodwill of  
3 the lenders. That -- I mean I understand it, but is it --  
4 in the context of 107, I have trouble getting any traction  
5 with that. It feels like a very slippery way of looking at  
6 it. So, I -- the goodwill of the lenders, I mean, if you  
7 ask any creditor at any bankruptcy, do you want to have your  
8 information out there, they'll say no, and often times their  
9 counterparties are people still doing business. And so,  
10 that argument would seem to apply in every case and we'd  
11 have to rewrite 107 and since I don't have that particular  
12 authority, it would be a problem. So, what -- what do you  
13 want me to do with the goodwill of the lenders?

14 MR. PESCE: Well, the way we're looking at it is  
15 this. Genesis is basically in the business of making and  
16 receiving loans from crypto investors. The names,  
17 addresses, and email addresses to those individuals are  
18 equivalent to a customer list. The value of that customer  
19 list is in the people's names, the net worth, the addresses  
20 associated with it, but it's also the value of that list, in  
21 essence is also tied to the fact that a buyer or if there's  
22 a reorganization, the creditors will realize the value of  
23 that.

24 Now, I don't need to tell you how differently, you  
25 know, for example like an American Airlines type case would

1 have been if not only did you have the -- this great  
2 frequent flyer program list, but if the value of that list  
3 would have been dissipated if it was released, and moreover,  
4 the good feelings that the passengers or the concierge key  
5 members, or what have you, would have been dissipated if  
6 they knew that their information was released by, you know,  
7 an airline (indiscernible) --

8 THE COURT: But if they were creditors -- if they  
9 were creditors, their information was released. So, how is  
10 it any different than a bank -- a list of bank customers or  
11 even a list of plumbing supply customers? I mean, I -- in  
12 terms of goodwill, if there's something specific to crypto,  
13 and certainly Mr. Renzi's declaration goes to that, but I --  
14 the goodwill aspect just seems exceedingly slippery to me,  
15 and I just don't know how I can rely on that without  
16 essentially rewriting 107 to mean that --

17 MR. PESCE: Yeah.

18 THE COURT: -- it just we're going to seal  
19 everything. Now --

20 MR. PESCE: We don't (indiscernible) --

21 THE COURT: -- you can make the argument from a  
22 policy point of view that 107 is outdated and the you can  
23 accomplish the goals that it should be -- there should be a  
24 much more recognition about people being dragged into the  
25 bankruptcy, who they didn't file the case; and that their

1 information in this -- in this century is much more in play  
2 and at risk. And that's, unfortunately, something that  
3 we'll have to wait for Congress to act on.

4 MR. PESCE: Yeah.

5 THE COURT: As opposed to having me act on it.

6 MR. PESCE: I think the -- so we won't -- contrary  
7 to what's been said at the hearing, we don't think you need  
8 to look to amending 107 and we don't think you need to look  
9 to foreign law or other things. 107 says that you can  
10 protect -- 107B says you can protect commercially sensitive  
11 information. Our view is that the names, addresses and email  
12 addresses of the lenders, especially when coupled with the  
13 claim amounts, which would be out there, is commercially  
14 sensitive information.

15 That in itself warrants protection. That goodwill  
16 argument is really just sort of a enhancing that. That  
17 commercially sensitive information is valuable in its own  
18 right. It will become even more valuable or retain its  
19 value if the, you know, the lenders know it is being kept  
20 confidential. But the primary reason we're here is we think  
21 that the commercial -- that the lender names, addresses, and  
22 email addresses is, itself, sensitive commercial information  
23 that warrants --

24 THE COURT: But what --

25 MR. PESCE: -- protection.

1 THE COURT: -- what sort of showing then do I need  
2 for that? Do I need somebody who's a financial advisor?  
3 Somebody can say this sort of information's been sold  
4 before. Somebody who can give me something specific. I  
5 understand Mr. Renzi provided a lot of information about the  
6 threats from having the information out there. And but  
7 obviously, institutions, the statute is written the way it's  
8 written, talking about entities in one spot and individuals  
9 in another. Which may be, again, somewhat outmoded, but what  
10 kind of showing do I need for that? What do I have here and  
11 what else might I need to rely on that commercially  
12 sensitive information?

13 MR. PESCE: Sure. I think -- so when we filed two  
14 declarations for Mr. Renzi, the first one, I think hits on  
15 the issue that you're talking about right now. Mr. Renzi's  
16 declaration states that the creditors -- you know, as the  
17 financial advisor to the creditor's committee, he believes  
18 that the lender names and their PII is effectively going to  
19 be monetized through the sale process, or the value of that  
20 commercially sensitive information is going to vest with the  
21 lenders in a reorganization. And it's equivalent to a  
22 customer list. And as such in the, you know, in the first  
23 declaration, he says that's what warrants its protection.  
24 Because it's sensitive and the disclosure will impede the  
25 value of that that could be realized during the marketing

1 process or reorganization.

2 THE COURT: Do you have any authority for customer  
3 lists in cases being protected under 107?

4 MR. PESCE: You now, I think it's -- it's, you  
5 know, you never -- you never see a retailer listing all of  
6 like their gift card users. You don't, as far as I'm aware,  
7 see, you know, hotels listing all of their, you know, VIP  
8 guests. You don't see, you know, rail or airlines listing  
9 like all of their frequent flyer members in the schedules  
10 and statements. You have kind of true external -- or you  
11 keep that information confidential because if you release  
12 it, it just becomes worthless, because anyone can go on the  
13 internet and fine out here are the people that I should go  
14 poach for my own competitor business.

15 THE COURT: No, why I understand that, but I  
16 guess, sometimes you don't see it because it just doesn't  
17 come up, meaning they aren't on a list of creditors. But  
18 certainly, I can imagine that such customers are in some  
19 industries, end up on creditor lists, and so that's why I'm  
20 asking whether this is --

21 MR. PESCE: Yeah, I think -- yeah, honestly, the  
22 issue has become more acute in the crypto space, because  
23 these companies are not as complicated as other operating  
24 businesses. Whereas, you know, a just to use the airline  
25 example, airlines have frequent fliers, but they also have



1 hundreds or thousands of other vendors, bond holders,  
2 lenders, employees, and whatnot, that get listed. Here, you  
3 know, I appreciate --

4 THE COURT: But -- but wouldn't that open the door  
5 to people trying to partially redact the creditor lists,  
6 right? And you just say well, I've got some folks, you  
7 know, I have counter parties who don't want to be mentioned  
8 in a bankruptcy. I have -- so I'm just concerned about the  
9 limiting principle in what you're advocating here.

10 MR. PESCE: Yeah. I think the limiting principle  
11 here is that unlike a -- take for example if you had a  
12 service provider, right? And you were engaging that service  
13 provider to provide services to the Debtor. That's separate  
14 and apart from the Debtor trying to keep confidential the  
15 name of a list of commercial counterparties, it is  
16 cultivating to provide basically all of its revenue. You  
17 know, you don't -- all of your revenue doesn't depend on you  
18 having a plumbing contract or some other vendor doing  
19 business with you. Here Genesis' business, literally,  
20 entirely depends on the names of the people it has found to  
21 lend and exchange crypto with in its lending business.

22 THE COURT: But -- but if it is so, Mr. Zipes had  
23 said earlier that he noted that the lack of a privacy  
24 provision in the agreement that would bar their information  
25 from being sold and saying well, people are sophisticated

1 investors and so the idea that they're sophisticated  
2 investors -- not particularly institutional investors, when  
3 he's in favor of the fact that they know that they're doing  
4 and they know what they're getting themselves into. And if  
5 it was a pre-existing agreement that required their  
6 identities not to be disclosed, then so be it. But we don't  
7 -- that it's inappropriate to impose that restriction after  
8 the fact.

9 MR. PESCE: Yeah, I don't know if I agree with  
10 that. I think it's really reflected in the Renzi  
11 declaration the company did have, at least with the subset  
12 of agreements that we've been able to put our hands on, did  
13 have agreements that said it would keep the information  
14 confidential. Those agreements did not -- did not, you  
15 know, I guess, they might not have contemplated like the  
16 public dissemination of that broadly, but you know, that's  
17 kind of, I think, not really the point. You have this group  
18 of customers, they're going to -- if they do a sale, it's to  
19 transfer the customers over to a competitor that is going to  
20 want to monetize and keep the confidences of those customers  
21 so that they have value at the new platform.

22 THE COURT: All right.

23 MR. PESCE: So, and I think this was a -- I mean,  
24 this might be -- this is a factual issue, I mean, we're  
25 happy to provide some more, but we did attach, at least, one

1 or more of the privacy agreements that were in the lending  
2 agreements that were with Genesis and some of the customers.

3 THE COURT: All right. Any -- anything else,  
4 counsel, that you wanted to set forth on your specific  
5 application before we get to hearing from the US Trustee?

6 MR. PESCE: Yeah, I would just make two quick  
7 points. First, in terms of the suggestions earlier about,  
8 you know, using home addresses or business addresses and  
9 things like that; candidly that's just going to put a  
10 massive burden on the estate or the committee or whoever is  
11 vested with doing it. I think the benefit -- and the  
12 benefit of that, would -- I think it'd be pretty nominal if  
13 not negative.

14 THE COURT: I know, but I don't think I have an  
15 ability, under the statute, to use that as a cognizable  
16 basis, right? So, if the notion is that it's -- what I hear  
17 the Debtor saying is that because it's a home address,  
18 they're sort of a hybrid situation that they are somewhat  
19 individualized as opposed to institutions, and that's why  
20 you can use the other section of the statute. But I don't  
21 know that I can sit here and talk about administrative  
22 burden on the estate, because frankly, if I were doing that,  
23 you know, the thread of lawsuits in the EU and the UK, and  
24 Singapore might be a more prominent part of this discussion.

25 MR. PESCE: Yeah. I think my point here is just

1 that in terms of -- there is a balancing here. The risk of  
2 the information getting out there is -- or the costs to the  
3 estate are huge, and then in terms of balancing what the  
4 appropriate remedy I or how surgical we can be. I --

5 THE COURT: But where in the statute, where in the  
6 case law do I get to balance that? That, I think is where  
7 the US Trustee's office is, is the statute is the statute--  
8 and if we start talking about balancing things, I don't -- I  
9 mean, I think I have to look to see if the contemplated  
10 injury is -- exists, and then do follow the blueprint of the  
11 statute, I don't think it allows me to weigh that.

12 MR. PESCE: Now (indiscernible) --

13 THE COURT: And, you know, again, that may be a  
14 revised 107, but I don't think it's the current 107.

15 MR. PESCE: I -- yeah, I think we might be, I  
16 think the US Trustee and the Committee might be just talking  
17 past each other. I mean, there's not -- there's no inherent  
18 balancing here, but in terms of the appropriate remedy to  
19 limit the amount of redaction, you know, we should find a  
20 remedy that's not going to, in itself, cause a further cost  
21 to the estate. Which is jut my suggestion.

22 And finally, the second point I just wanted to  
23 make really quickly is just on in terms of the individuals,  
24 our point there is there was some commentary in the US  
25 Trustee's response or its objection. We don't take -- we

1 don't believe that institutional creditors are individuals  
2 that are subject to 107. We want -- we think it's  
3 appropriate though, for the Court to redact the PII of the  
4 individual creditors, one, and then two, individuals who --  
5 we think it's -- we think it's implicitly necessary to do  
6 something on the institutions, because if you -- if the --  
7 because of the extent to which employee names and  
8 information is out there; if you release the institution's  
9 names, you can then kind of triangulate to find where they  
10 are, how they operate, where they're located.

11 THE COURT: But I'm not -- I'm not -- that I'm not  
12 following that. So, I don't know that I had a specific  
13 request or that anyone specifically identified employees and  
14 I know that employees are specifically identified in at  
15 least one of the decisions that I read. So, I don't know  
16 that I have -- and if we got to employees, somebody would  
17 have to identify for me, sort of the step how we get to  
18 employees. Is it -- is it -- why -- like in other words,  
19 just because somebody's an employee doesn't mean that a  
20 proof of claim filed by them, would necessarily be covered  
21 on that basis if you can't tell from the proof of claim that  
22 they're an employee. Right?

23 So, in other words, people have to self-identify.  
24 So, I -- so that's one of the reasons I asked Ms. VanLare  
25 about the counterparties, right? So, if you have a sea of

1 names, you know, we -- none of those names by themselves  
2 tell you that anybody's a potential counterparty. And so  
3 how can we protect the whole set of names --

4 MR. PESCE: Yeah.

5 THE COURT: -- because there's nothing about the  
6 set of names where it largely identifies you as a counter  
7 party. She has a solution, which is to say no, we have --  
8 we have independent source of information where we can come  
9 up with a list and then we can -- we can work with that  
10 list. But here, I don't know how identify -- so, how does  
11 the employee issue come up in the context of what you're  
12 seeking?

13 MR. PESCE: Yeah, so say for example, if you  
14 released the name of creditor X, as one of the Debtor's  
15 creditors, and you released the name and the contact  
16 information of creditor X as an institution. It, you know,  
17 it would then, because it is possible to find information  
18 about people who work for creditor X --

19 THE COURT: Yeah.

20 MR. PESCE: -- you know, their employee's names  
21 are listed on, you know, Linked In, on other kind of social  
22 media, et cetera. You could in turn, by disclosing creditor  
23 X's name, expose their employees or people affiliated with  
24 them to harm.

25 THE COURT: Well, but I think you just said

1       somebody could do that anyway, if properly motivated under  
2       the wonderful tool of the internet. And so if the cow has  
3       left the barn by virtue of the internet, there's not a whole  
4       lot I can do about fixing that. So, I mean it may be  
5       republishing it. I think cases tend to not be as concerned  
6       about republishing information that's already out there for  
7       purposes of a sealing requests.

8               MR. PESCE: Yeah, I mean, look I think a lot of  
9       this comes down to just minimizing the harm and minimizing  
10      the risk here. I mean, if for example, one of the members  
11      of the committee, an institutional creditor came to me and  
12      said they were very concerned about their name, the  
13      institutions name getting out there because then, you know,  
14      while the institution is a business, it can't, you know,  
15      experience, bodily harm, you know, they had a concern that  
16      people would track down individuals who worked there as a  
17      way to exerting pressure on the institutional creditor.  
18      That's the very risk that we're worried about here.

19             THE COURT: All right.

20             MR. PESCE: I mean, it's minimize risk --

21             THE COURT: That I understand -- I understand that  
22      argument. All right. Anything else, counsel, before I hear  
23      from the UST?

24             MR. PESCE: You know, Mr. Zipes just emailed me  
25      and said (indiscernible) --

1 THE COURT: (Indiscernible).

2 MR. PESCE: -- maybe are you on now? Okay.

3 MR. ZIPES: Gregory, I appreciate that. I'm on  
4 again.

5 MR. PESCE: Okay. Good.

6 MR. ZIPES: Your Honor, I -- we're apparently  
7 having failures throughout the country because my colleague,  
8 Ben, was also disconnected from Seattle. So, --

9 THE COURT: Oh. Well, that's --

10 MR. ZIPES: -- I apologize.

11 THE COURT: -- been there done that. And if this  
12 is a current problem, it is now 20 to 2. If it -- if it  
13 would be of any assistance, we could resume after lunch, if  
14 that would be helpful so you don't have to worry about his  
15 particular problem. I'm open to suggestions.

16 MR. ZIPES: Your Honor, I haven't had this problem  
17 before and I'm not sure what it is, so I think we're  
18 basically done here. I had one suggestion, because there's  
19 a lot to digest here. And one factual issue which I think  
20 we don't need to have an evidentiary hearing on, but if the  
21 expert witness, here, can just state on the record, as part  
22 of the sale -- maybe he's not prepared to do this, but as  
23 part of the sale, what pieces of information would be a part  
24 of the sale? Because I think it would -- just having a name  
25 is not the same as all the information that would be



1 transferred as part of the sale. I think that would be  
2 irrelevant.

3 THE COURT: You want to further connect the dots  
4 for purposes of the 107 invocation dealing with commercial  
5 information?

6 MS. CRISTE: If --

7 MR. ZIPES: Correct, and I don't want to put  
8 anybody on the spot here, but and I want to reserve my  
9 rights as well, but I think that would be helpful and  
10 (indiscernible) --

11 THE COURT: Here's what I would propose to do.  
12 And I'll hear from everybody before we actually take a  
13 break. Is to take a break now, which would allow you, Mr.  
14 Zipes, to have a conversation with the committee and it's --  
15 and Mr. Renzi about exactly what it is, the contours of  
16 which you would like on the record. And so that we don't  
17 have to do this on the fly, it's a little difficult to do on  
18 the fly. And it's even worse in a virtual courtroom, and I  
19 keep reminding myself that when I have evidence, I should  
20 just drag everybody in because there's no substitute for  
21 that. We could just sit in the back, and you could figure  
22 it out.

23 But since it is almost lunchtime, we can do what -  
24 - we would probably do -- if you were all here in person,  
25 which is to take a break and allow you to have that

1 discussion and then come back this afternoon, say about 2:30  
2 or 3:00 even, to give you a chance to chat and figure things  
3 out, and then we can sort of wrap up where we are. And I'll  
4 show a little bit of my hand. My thought would be to make a  
5 ruling dealing with the things that are uncontested and to  
6 make it clear that those can be protected. For the other  
7 things, I then would have a discussion about whether the  
8 record is closed or not. Where there's a need for an  
9 evidentiary hearing because there is a certain sense that  
10 this is sort of evolving as we talk about it.

11 And this is not supposed to be trial by ambush, so  
12 -- so folks should -- that's why I would also encourage the  
13 UST and White and Case to have a discussion because you can  
14 all figure out what else is out there? What you can agree  
15 upon in terms of the record, or not. And then we can have a  
16 conversation and figure out where we are. So, that would be  
17 my suggestion. So, since it -- it probably most directly  
18 implicates the UST and the Committee, I'll hear from them in  
19 a second and then I'll hear from Ms. VanLare if she has any  
20 thoughts as Debtor. So, Mr. Zipes, what do you think of  
21 that approach?

22 MR. ZIPES: Your Honor, that's fine and I think  
23 you have tipped your hand a little bit in some, in the way  
24 you asked some of the questions. And it -- so it's fine to  
25 take a lunch break. I can't -- I don't have authority right

1 now to agree or not agree to anything other than what's in  
2 our objection, so --

3 THE COURT: No, that's fair.

4 MR. ZIPES: -- and if the Court wants to reconvene  
5 at three, that's fine.

6 THE COURT: All right. Mr. Pesce, any thoughts  
7 about taking a break until three?

8 MR. PESCE: That's fine with me. Thank you, Your  
9 Honor.

10 THE COURT: All right. And Ms. VanLare, last but  
11 not least.

12 MS. VANLARE: Thank you, Your Honor. I would just  
13 say that, you know, we are supportive of the Committee's  
14 motion and we would like to be included in the discussions,  
15 particularly if we're talking about any evidentiary issues.  
16 I mean, we agree that -- that this information, the lender  
17 information is an asset of the estate, and we just want to  
18 make sure we're included in the discussions, obviously,  
19 particularly as it concerns the sale process and really the  
20 rest of it, so I just want to make sure that the Debtors are  
21 a part of any discussions.

22 THE COURT: All right. That's a very fair point.  
23 Mr. Zipes?

24 MR. SAZANT: Sorry, Your Honor,

25 THE COURT: Oh.

1 MR. SAZANT: Jordan Sazant again, on behalf of  
2 Prokauer Rose, counsel for the Ad Hoc Group of Genesis  
3 Lenders. We represent over \$2 billion in petition date  
4 dollar value of claims and over two thirds of the top 50  
5 creditors. You know, respectfully, the Committee certainly  
6 represents and has a fiduciary duty to all creditors, but  
7 this issue is very important to our clients and we would ask  
8 that we be included in these discussions. I do have some  
9 supplemental arguments on top of what Mr. Pesce has proposed  
10 -- put forth, but if it's best to reserve those for after  
11 the lunch break, I'm happy to do so.

12 THE COURT: Yeah, I would say, I think now is as  
13 good a time to break as any to figure out what we -- how do  
14 we get from where we are to the conclusion on the record on  
15 this issue and so, that would be my thought. So, I would  
16 say, it's a quarter to two, I would say 3:00, assuming  
17 that's enough time, but I don't want to jam people  
18 artificially, because there's no magic between 3 and 3:30.  
19 So, would it be better to set it later? I also am happy if  
20 you want to sort of start having conversations to reach out  
21 to chambers and do what you would do otherwise in person,  
22 which is say Judge, we need a few more minutes. So,  
23 whatever works for you all.

24 MR. PESCE: If it's okay with the parties and the  
25 Court, I might suggest that maybe like if you're still

1 around this afternoon, maybe like four, just to briefly  
2 check in? Just to make sure we have enough time to it once  
3 and right. But otherwise, we can do three, but I'm just  
4 trying to short circuit coming back.

5 MS. VANLARE: Yes, and that's -- a later time is  
6 fine with us, Your Honor.

7 MR. ZIPES: I would keep to the 3:00, but myself,  
8 Your Honor, I don't know, but I'm happy to adjourn it out to  
9 four if we're making progress, I think --

10 THE COURT: So, -- so here's what we'll do. We'll  
11 make it 3:30, just because that way we know we have enough  
12 time to finish by the end of the day and that should give us  
13 -- give you all enough time to hopefully get sort of closure  
14 at least on what we're trying to do. And so -- so I will  
15 just leave you with one thought. I don't have the authority  
16 to write -- rewrite 107. I have my own personal views, but  
17 they're entirely irrelevant.

18 And so, my -- as you can see by the start of the  
19 questions with Ms. Vanlare, right from the beginning, my  
20 question is how is it -- like what is it that's particular  
21 to quote Hamlet, why is it so particular with you in this  
22 case that 107's implicated? And that's -- that's I think  
23 something that's important because it's -- and that's what  
24 Judges have done and that's what Judge Garrity did in, you  
25 know, in the context of his case. So, that's really what I

1 -- the focus for example on commercial information, customer  
2 lists, and all that stuff, is probably the most pressing  
3 question. So, with that, let me ask if there's anything  
4 else that we need to discuss before we adjourn until 3:30?

5 MR. ZIPES: Your Honor, I appreciate your  
6 attention to this and I understand that everybody -- all the  
7 parties want this resolved and not turn this into a sideshow  
8 of sorts. So, we will try to get this resolved.

9 THE COURT: Yeah, well, listen your lips to God's  
10 ears. If not, I'll do what I have to do at my day job,  
11 which is make a decision. But appreciate everybody's  
12 arguments and observations and certainly I'll hear from the  
13 Ad Hoc Group after lunch, and I'll see you all at 3:30.  
14 Thank you very much.

15 MR. SAZANT: Thank you very much, Your Honor.

16 MS. VANLARE: Thank you, Your Honor.

17 (Recess)

18 THE COURT: Good afternoon, once again, this is  
19 Judge Sean Lane, in the United States Bankruptcy Court for  
20 the Southern District of New York, and we're here for our  
21 continued hearing in Genesis Global Holdco, LLC. We started  
22 at 11:00 and to say continued hearing may be a bit of an  
23 overstatement given what you're about to tell me. We had  
24 gotten some communications before coming out here that there  
25 was an intent to adjourn things out, which I obviously have

1 no problems with. I just wanted to do it on the record so  
2 that folks who may not be privy to the goings on and who  
3 might have logged in to listen to the hearing would know and  
4 they wouldn't be sitting on the call at 3:30 until the end  
5 of the day wondering what happened. So, with that, I'm not  
6 sure who wants to take the -- grab the podium, virtual  
7 podium to sort of T up where we are.

8 MS. VANLARE: Your Honor --

9 MS. CRISTE: Amanda -- go ahead Jane.

10 MS. VANLARE: Go ahead -- I was going to say,  
11 Your Honor, I think you've correctly related. We did reach  
12 out separately to your chambers to adjourn and find a  
13 hearing date the Week of April 10th on the redaction issue.  
14 So, I don't know if the Committee has anything to add to  
15 that.

16 THE COURT: Anything from the Committee?

17 MS. CRISTE: Your Honor, yes, this is Amanda Parra  
18 Criste of White and Case on behalf of the Committee, that's  
19 -- that's correct. That reflects the discussions that  
20 occurred during the break. I wanted to thank, Your Honor,  
21 for your time and patience as well. The only other think I  
22 would add is that I think the idea is that during at  
23 adjournment hearing and I just want to make this clear for  
24 the record, the Debtors and the Committee will either  
25 present witnesses to address certain issues that have been

1 raised by the United States Trustee that we believe are not  
2 resolved. Or alternatively the Debtors and the Committee  
3 will file supplemental declarations for submission at that  
4 hearing. The parties will also plan to present closing  
5 remarks, and I think what we are requesting is about two  
6 hours for that hearing. So, we'll coordinate that with  
7 chambers.

8 THE COURT: All right. Yeah, Ms. Eve banks will  
9 get you squared away. I guess, my one question is that I  
10 have been making sure to try to bring people back for  
11 evidentiary matters, just because there's really no -- it's  
12 just a much better way to handle evidence, we're much --  
13 everybody's much more nimbly address anything that comes up  
14 whether it's having exhibits, which it's cross-examination,  
15 and not to bore you, with an anecdote, but I recently had a  
16 case that turned the tide for me on this issue and when  
17 someone said well.

18 We don't need an evidentiary hearing. Se just  
19 have a few questions, Judge, it'll take five minutes. And  
20 then two hours later, we were still at it and we had  
21 everything from people not having exhibits in front of them,  
22 all sorts of stuff, and again, it's just -- it's just better  
23 to do it in person. So, my thought would be to -- and when  
24 I say in person, what I would do is set up essentially, a  
25 hybrid hearing, meaning the people who need to be here are



1 here, who are handling the evidence, and other people are  
2 more than -- more than able to -- I'm more than happy to  
3 have the participate remotely.

4 So, I don't want to drag everybody in and -- for  
5 no reason, but that would be my thought here for this  
6 evidentiary hearing. That we can sort of nimbly address  
7 whatever situation we have. And I suppose if the parties  
8 reach a conclusion that there's no cross-examination, no  
9 possibility or need for cross-examination, that the  
10 evidentiary record is what it is.

11 We just -- I just -- and therefore we don't need  
12 to come in person, then I'd ask that people really button  
13 that up and maybe submit something on the docket or  
14 something that makes that very, very clear, just so we all  
15 know the state of the record. And so, I guess, the other  
16 think I would ask is what the time frame is to file any  
17 additional declarations, just so people know when they might  
18 arrive.

19 MS. CRISTE: Your Honor, would it be possible to  
20 get some guidance, since we don't know the date of the  
21 hearing, could we get some guidance from you as to maybe how  
22 we would work back from that hearing?

23 THE COURT: Sure. So, I think -- I'm not going to  
24 get in the way here because for scheduling, I can only mess  
25 this up. But I think a date that's being discussed is April

1 12th. And I would imagine that would be in the afternoon, I  
2 think. So, without setting that as a date, because I'll let  
3 you work that out with Ms. Eve Banks, you're much better  
4 hands with her. But I would say the idea would be -- I  
5 would think maybe a week before, so that people then can  
6 take a look at them and figure out if they do need cross-  
7 examination and if people need to make travel plans and  
8 things of that sort. So, is that -- is that what people had  
9 in mind? I'm open to other suggestions, obviously.

10 MR. SAZANT: Your Honor --

11 MS. CRISTE: Your Honor --

12 MR. SAZANT: Go ahead, Amanda.

13 MS. CRISTE: I think that would be okay with the  
14 Committee. A week from today to submit supplemental  
15 declarations if that's what we decide to do.

16 THE COURT: All right. All right. Anything else  
17 from the Committee before I hear from the UST?

18 MS. CRISTE: No, Your Honor, nothing further from  
19 us. Thank you.

20 THE COURT: All right. And anything from the UST?

21 MR. ZIPES: Your Honor, Greg Zipes, with the  
22 United States Trustee's Office. We'll attempt to get pointed  
23 questions or specific question and see if we can get them  
24 answered in the form of declarations and that may or may not  
25 be sufficient.

1 THE COURT: All right. Fair enough. You won't  
2 know until you see it. That's fine. And what I'm going to  
3 do is I'm going to assume that the evidentiary portion will  
4 be handled in person, subject to hearing otherwise after  
5 everybody consults with each other and that you're all in  
6 agreement. But -- so we'll make that the default. So,  
7 it'll be like the old days. And so we'll have that here in  
8 court, again, just the part that's evidentiary and  
9 obviously, other people are -- can listen in and we'll have  
10 the capacity in the hybrid hearing. All right. So, with  
11 that, any other questions, or concerns that anybody might  
12 want to raise at this time?

13 MR. PESCE: That's White Plains, Your Honor,  
14 correct? You're not coming (indiscernible) --

15 THE COURT: Yes, that is White Plains, correct.

16 MR. PESCE: Okay. Thanks.

17 THE COURT: I am stepping into Judge Drain, not  
18 replacing him, because I wouldn't want to make such a bold  
19 claim as to replace Bob Drain. Yes, White Plains, and one  
20 thing apropos of nothing, I suppose, Mr. Zipes, I didn't  
21 mean to drive the other person from your office off the call  
22 earlier today. But I had -- to the extent that it was  
23 perceived to be a defending your honor, I'm very happy it be  
24 seen in that way.

25 MR. ZIPES: Your Honor, I appreciate that and

1 these misunderstandings happen every once in a while and I -  
2 -

3 THE COURT: No, it's fine.

4 MR. ZIPES: -- I apologize for that. And I  
5 understand --

6 THE COURT: No, no, no. No apology necessary.  
7 All those things are little easier to deal with in person  
8 and in video it just seems a bit more abrupt, so I wasn't  
9 trying to be rude to the individual in question. So, you  
10 can please pass that along. I think it came off as a little  
11 more abrupt than perhaps I intended. But (indiscernible)

12 MR. ZIPES: Your Honor, sometimes you rule against  
13 us, but you're never rude. I can say that.

14 THE COURT: All right. Well, that's good to know.  
15 That's good. All right. Anything from any other party?

16 MR. SAZANT: Nothing from Ad Hoc's.

17 THE COURT: All right. Great. Thank you. I  
18 wanted to make sure to hear from the Ad Hoc's as well. All  
19 right. Well, let me just end by saying, I appreciate  
20 everybody's efforts to talk to each other and to make sure  
21 the record is what it should be and that may lead to a  
22 resolution, it may not, and that's okay, but the process by  
23 which people are going about this is laudable, and I  
24 appreciate it and we'll see here we end up in April. Thank  
25 you very much. In the meantime, be well.

1 MR. ZIPES: Thank you, Your Honor.

2 MS. CRISTE: Thank you, Your Honor

3 MS. VANLARE: Thank you.

4 (Whereupon these proceedings were concluded at

5 3:44 PM)

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I N D E X

RULINGS

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GRANTED

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Application to Retain Berkeley Research

Group, GRANTED

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Application to Retain White and Case,

GRANTED

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Limited Waiver of Section 345, GRANTED

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: April 3, 2023